EVELEIGH, J., dissenting. I respectfully dissent. I disagree with the majority's conclusion that leased motor vehicle registration renewal fees (renewal fees), paid by motor vehicle lessees directly to the department of motor vehicles (department), are part of the "gross receipts," as that term is defined by General Statutes § 12-407 (a) (9) (A), of the plaintiff, HVT, Inc., trustee of a lease trust that owns the motor vehicles, thus constituting part of the plaintiff's taxable gross receipts under General Statutes § 12-408 (1). Specifically, I disagree with the majority's reasoning that, "because the legal obligation to register and reregister the leased motor vehicles lies solely with the plaintiff, and the lessees' payment of the renewal fees to the department, pursuant to the lease agreement, relieves the plaintiff of that obligation and *thus provides it with a financial benefit*, *that benefit must be considered part of its gross receipts*." (Emphasis added.) I also disagree with the majority's conclusion that *AirKaman, Inc.* v. *Groppo*, 221 Conn. 751, 607 A.2d 410 (1992), does not control the outcome of this case. I would instead conclude, based on my review of § 12-407 as well as this court's decision in *AirKaman, Inc.*, that the lessees' payment of renewal fees directly to the department does not constitute the plaintiff's taxable gross receipts. Accordingly, I would reverse the judgment of the trial court and remand the case to that court with direction to render judgment for the plaintiff.

The parties do not dispute that the statute at issue involves the imposition of a tax. Like the majority, I therefore begin with the guiding principle that "[w]hen the issue is the imposition of a tax, rather than a claimed right to an exemption or a deduction, the governing authorities must be strictly construed against the commissioner [of revenue services] and in favor of the taxpayer." (Internal quotation marks omitted.) *Key Air, Inc.* v. *Commissioner of Revenue Services*, 294 Conn. 225, 233, 983 A.2d 1 (2009). In light of the stipulated facts, I also agree with the majority that the narrow question of law before the court, over which we exercise plenary review, is whether the lessees' payment of renewal fees directly to the department constitutes the plaintiff's gross receipts such that the plaintiff must charge the lessees sales tax on that payment.

I begin by reviewing the statutory taxation scheme governing this appeal. See General Statutes § 1-2z. Section 12-408 (1) provides in relevant part that, "[f]or the privilege of making any *sales* . . . at retail, in this state *for a consideration*, a tax is hereby imposed on all retailers at the rate of six per cent of the *gross receipts* of any retailer from the sale of all tangible personal property sold at retail or from the rendering of any

services constituting a sale . . . .” (Emphasis added.) Pursuant to the dictates of this statute, three terms are essential to resolving the issue on appeal. First, there is no question that the leasing of a motor vehicle constitutes a “sale.” See General Statutes § 12-407 (a) (2) (J); Regs., Conn. State Agencies § 12-426-25.[1] Second, although the term “for a consideration” is not defined by statute, this court has stated in this context that “ ‘[c]onsideration’ means ‘something given as recompense,’ a ‘payment, reward.’ ” *AirKaman, Inc.* v. *Groppo*, supra, 221 Conn. 764, citing Webster’s Third New International Dictionary. Third, as it pertains to the leasing of tangible personal property, gross receipts are defined as meaning “the total amount of payment or periodic payments from leases or rentals of tangible personal property by a retailer, valued in money, whether received in money or otherwise, which amount is due and owing to the retailer or operator and, subject to the provisions of subdivision (1) of section 12-408, whether or not actually received by the retailer or operator . . . .” General Statutes § 12-407 (a) (9) (A).

Section 12-407 (a) does not define the phrase “due and owing” contained in the definition of gross receipts, nor does any provision of the General Statutes governing taxation, and this court has not analyzed the statutory phrase “due and owing to the retailer . . . .” When interpreting a statute, this court gives effect to all provisions of a statute and avoids a construction that would render any of them superfluous. See *Lopa* v. *Brinker International, Inc.*, 296 Conn. 426, 433, 994 A.2d 1265 (2010). “When a statute does not provide a definition, words and phrases in a particular statute are to be construed according to their common usage. . . . To ascertain that usage, we look to the dictionary definition of the term.” (Internal quotation marks omitted.) *Potvin* v. *Lincoln Service & Equipment Co.*, 298 Conn. 620, 633, 6 A.3d 60 (2010). According to Black’s Law Dictionary, “due” is defined as, inter alia, “[o]wing or payable; constituting a debt,” and “owing” is defined as “[t]hat is yet to be paid; owed, due . . . .” Black’s Law Dictionary (9th Ed. 2009). This court’s common usage of “due and owing” is consistent with these dictionary definitions, namely, to describe an unpaid monetary sum that is allegedly currently payable from one party to another, often under contract, by statute, or following a legal judgment. See, e.g., *Rainforest Cafe, Inc.* v. *Dept. of Revenue Services*, 293 Conn. 363, 381, 977 A.2d 650 (2009) (unpaid taxes “due and owing” to defendant); *Knapp* v. *Knapp*, 270 Conn. 815, 825, 856 A.2d 358 (2004) (award of interest on damages “due and owing” to plaintiff); *Updike, Kelly & Spellacy, P.C.* v. *Beckett*, 269 Conn. 613, 633–34, 850 A.2d 145 (2004) (unpaid attorney’s fees “due and owing” to plaintiff).

Although the definition of taxable gross receipts may include funds currently due and owed to, but not yet received by, a retailer, in my view, the statutory defini-

tion of gross receipts nonetheless requires that such payments are actually payable to the retailer. I therefore disagree with the majority's reasoning that a lessee's payment of the renewal fees constitutes the plaintiff's gross receipts because that payment inures to the benefit of the plaintiff as the owner and lessor of leased motor vehicles. Upon the expiration of the initial registration, some actor must remit the renewal fees to the department. Under the facts presented, however, lessees do not pay the renewal fees to the plaintiff because those fees are not payable—or, in other words, due and owing—to the plaintiff in its capacity as a lessor of motor vehicles.[2] Rather, as demonstrated by the joint stipulation and the representative lease agreements submitted to the trial court, lessees remit renewal fees to the department as the state agency to which the renewal fees are payable.[3] See General Statutes § 14-15. The comparison of the lessees' monthly lease payments, which are the uncontested gross receipts of the plaintiff, with the lessees' payment of renewal fees, illustrates that renewal fees cannot properly be considered the plaintiff's taxable gross receipts under § 12-407 (a) (9) (A).[4] Monthly lease payments logically correspond to the statutory elements of a retailer's gross receipts and they illustrate the illogic of including renewal fees within the plaintiff's gross receipts. Specifically, monthly lease payments are periodic payments related to the lease of tangible personal property, namely, a vehicle; the payments are valued in dollars and received in money; the payments are due and owing to the plaintiff under the lease agreement for the provision of the vehicle; and the payments may or may not be received by the retailer, such as when the retailer has hired a third party to perform the task of supervising accounts payable.

In my view, the purpose and language of § 12-407 (a) (9) (A) defining gross receipts cannot be stretched to include the lessees' remittance of renewal fees directly to the department when such payments are never due or owing to the plaintiff as lessor. If the language of the statute were so expansively interpreted, I see no reason why the definition of taxable gross receipts would also not extend to other payments made by lessees during the course of a lease, such as securing required insurance, maintaining emissions compliance, and performing required maintenance to ensure a vehicle is roadworthy. In my view, the lessees' payment of these fees benefits the plaintiff as owner in the same manner as the majority claims the payment of renewal fees benefits the plaintiff. For instance, at the time of entering into a lease, a vehicle must be registered; it must also be insured. General Statutes § 14-12b. Although the plaintiff and the lessees jointly work to maintain a leased vehicle's registration, they are also obligated to maintain insurance during the course of the lease. General Statutes §§ 14-12b and 4-15a. Further,

while the lessees undertake to remit the renewal fees directly to the department and not to the plaintiff, the lessees similarly agree to secure insurance and then remit those payments directly to their insurance company, not to the plaintiff.

Additionally, the lessees' payment of insurance premiums, emissions costs, and fees to maintain a vehicle's roadworthiness correspond to statutory mandates for vehicle owners in the same manner that the majority claims that the plaintiff's statutory duty to maintain a vehicle's registration supports its conclusion that the renewal fees constitute gross receipts. See General Statues § 14-213b (insurance); General Statutes § 14-164c (d) and (n) (emissions compliance); General Statutes § 14-80 (mechanical equipment standards). Indeed, General Statutes § 14-107 (a) provides in relevant part that "[t]he owner, operator or lessee of any motor vehicle may be prosecuted jointly or individually for violation of" numerous motor vehicle statutes, including General Statutes § 14-13 (a) (failure to carry certificate of registration and insurance card in vehicle at all times); General Statutes § 14-18 (failure to properly display number plates and registration stickers); General Statutes § 14-80 (b) and (d) (failure to comply with muffler standards); General Statutes § 14-80b (operating vehicle with concealed ball joints or tie rod ends); General Statutes § 14-80h (failure to satisfy braking requirements); General Statutes § 14-99f (operating vehicle with obstructed windshield).

I therefore disagree with the majority's reasoning that, because the lessees' payment of the renewal fees inures to the benefit of the plaintiff, and because the plaintiff is statutorily required to register a leased vehicle, the renewal fees constitute the plaintiff's gross receipts. On the basis of my reading of the statutory language, I would instead conclude that the lessees' payment of renewal fees directly to the department does not constitute the plaintiff's taxable gross receipts because those fees are not "due and owing to the retailer," in this case, the plaintiff.

My conclusion that the lessees' payment of the renewal fees directly to the department does not constitute the plaintiff's taxable gross receipts is further supported by this court's decision in *AirKaman, Inc.* v. *Groppo*, supra, 221 Conn. 764, where this court concluded that the imposition of the sales tax to the transaction at issue "would be improper because a mere transfer of expenses between parties cannot be regarded as a sale of services."[5] The majority in the present case attempts to distinguish *AirKaman, Inc.*, concluding that "[t]he plaintiff's retention of sole statutory responsibility for renewing the leased vehicle registration and paying renewal fees distinguishes this case from *AirKaman, Inc.*" I disagree.

As set forth by the majority, "[i]n *AirKaman, Inc.*,

Uniroyal, Inc. (Uniroyal) had entered into a twenty year lease with the state of Connecticut (state) to manage fixed base operations at Oxford Airport. [*AirKaman, Inc.* v. *Groppo*, supra, 221 Conn.] 753. Subsequently, Uniroyal subleased that contract to the plaintiffs, AirKaman, Inc. (AirKaman) and Combs Gate Bradley, Inc. (Combs Gate). Id. Uniroyal compensated both AirKaman and Combs Gate with a weekly payment and a percentage of net income generated (management fee) and reimbursed each for, inter alia, 'payroll and payroll expenses,' in accordance with their respective subleases. Id., 753–54."

This court in *AirKaman, Inc.*, subsequently determined the taxability of the two compensations, concluding that the management fees were taxable as gross receipts from the sale of management services, but that the reimbursement of payroll and payroll expenses were not gross receipts. Id., 754, 764. In reaching the conclusion that reimbursement for payroll and payroll expenses did not constitute taxable gross receipts for AirKaman and Combs Gates, the court stated that it was first necessary to "determine the true object of the transaction between [AirKaman and Combs Gates] and Uniroyal." Id., 763. This determination was essential because the sales and use taxes statute only levied a tax on a sale for consideration. Id., 763–64. To determine whether there was a sale for consideration, the court examined the transaction between the parties. Id., 764. After reviewing the facts, the court determined that the "sale" at issue was the provision of airport management services by AirKaman and Combs Gates to Uniroyal, and the "consideration" for that sale was Uniroyal paying AirKaman and Combs Gates a fixed weekly fee and a percentage of profits. Id., 754. In reaching this conclusion, this court determined that the "sale" could not be understood to mean the transfer of payroll and payroll expenses, and that the reimbursement of those expenses could not be understood to constitute "consideration" for the sale. Id., 764. Specifically, this court concluded that the reimbursement for the transferred expenses could not constitute a sale for consideration because "[t]he notion that reimbursement for out-of-pocket expenditures could constitute consideration for services rendered is contrary to the concept of payment or recompense." Id.

I disagree with the majority's conclusion that the principles of *AirKaman, Inc.*, are inapplicable to the present appeal because of which party—namely, the customer or the retailer—bore the original obligation to remit payroll expenses or pay renewal fees. According to the majority, it was "[o]f critical importance in *AirKaman, Inc.*," that Uniroyal, the customer, bore the preexisting contractual obligation to pay payroll and payroll expenses at the Oxford Airport as part of its contract with the state. The majority reaches this conclusion relying on the language of *AirKaman, Inc.*,

wherein this court stated several times that AirKaman and Combs Gate paid the payroll and payroll expenses "on behalf of Uniroyal" or as "Uniroyal's agent." The majority therefore concludes that "*AirKaman, Inc.*, thus stands for the proposition that a preexisting financial obligation of the *customer* cannot later be parlayed into the *retailer's* taxable gross receipts if the retailer first satisfies the obligation and is later reimbursed by the customer." (Emphasis in original.) By way of contrast, the majority states that, in the present appeal, the obligation to remit the renewal fees to the department belongs solely to the plaintiff as the retailer of the vehicles. Therefore, the majority concludes, "[b]ecause the original obligation to pay the renewal fees belonged to and remained with the plaintiff, the lessees' payment of those fees to the department . . . cannot qualify as reimbursements to the plaintiff excluded from taxation under *AirKaman, Inc.*" I disagree with the majority that the identification of which party bore the original obligation to make the payments was of critical importance to this court's decision in *AirKaman, Inc.*

In my view, nothing in *AirKaman, Inc.*, dictates the majority's application of the holding therein to the undisputed facts of the present appeal. I agree with the majority that, under the facts of *AirKaman, Inc.*, AirKaman and Combs Gate were retailers or the providers of the service, namely, airport management. I also agree with the majority that Uniroyal was the customer. In my view, and the view of the court in *AirKaman, Inc.*, the central facts of *AirKaman, Inc.*, demonstrate that the true object of the contracts between AirKaman and Combs Gate and Uniroyal was the provision of airport management services, for which AirKaman and Combs Gate received taxable management services fees, and the payroll and payroll expenses were an incidental expense transferred from Uniroyal to AirKaman and Combs Gate. *AirKaman, Inc.* v. *Groppo*, supra, 221 Conn. 754.

Similarly, in the present case, the lessees operated as the customers and the plaintiff as the retailer or the provider of the service, namely, tangible personal property in the form of a leased vehicle. The majority does not dispute this. In my view, the undisputed facts further demonstrate that the true object of the lease agreements between the lessees and the plaintiff was the provision of a leased vehicle, for which the plaintiff received monthly lease payments, and the renewal fee payments were an incidental expense transferred from the plaintiff to the lessees.

Applying the principles of *AirKaman, Inc.*, to the undisputed facts of the present appeal, I would conclude that the "true object of the transaction" at issue was the plaintiff's renting of a leased vehicle to the lessees, a sale under § 12-407 (a) (2) (J), and the consideration for that sale was the lessees' remittance of

monthly lease payments. Accordingly, the lessees' payment of the renewal fees to the department was neither the true object of the sale nor consideration for the sale because, similar to the court in *AirKaman, Inc.*, I would conclude that the lessees' payment of the renewal fees directly to the department was the "mere transfer of expenses between parties"; *AirKaman, Inc.* v. *Groppo*, supra, 221 Conn. 764; not taxable to the plaintiff as gross receipts.

On the basis of the foregoing, I would conclude that the lessees' payments of the renewal fees directly to the department do not constitute the plaintiff's taxable gross receipts because those payments are not "due and owing to the retailer"; General Statutes § 12-407 (a) (9) (A); and because the transfer of the renewal fees from the plaintiff to the lessees is not a sale pursuant to *AirKaman, Inc.* v. *Groppo*, supra, 221 Conn. 764. Accordingly, I would reverse the judgment of the trial court.

I therefore respectfully dissent.

[1] Section 12-426-25 (a) of the Regulations of the State Agencies provides in relevant part: "The rental or leasing of tangible personal property for a consideration in this state is a sale and is subject to the tax. The lessor is a retailer who must register with the [c]ommissioner of [r]evenue [s]ervices for a permit and collect the tax. The tax is imposed upon the gross receipts from the rental or leasing of tangible personal property. Such retailers shall pay the taxes so collected in the manner and form as other retailers licensed to sell tangible personal property. . . ."

[2] The facts of the present appeal are therefore unlike those before the Appellate Court in *Geckle* v. *Dubno*, 2 Conn. App. 303, 478 A.2d 263 (1984). There, the lessor of motor vehicles paid the personal property taxes assessed against the leased vehicles, and the lessees reimbursed the lessor. Id., 304. Accordingly, the lessees' payments were "due and owing" to the lessor and constituted the lessor's gross receipts. Subsequently, however, the legislature passed legislation exempting such payments from the definition of gross receipts. See General Statutes § 12-412 (49) (gross receipts do not include "[a]ny payment made by a lessee of a motor vehicle to a lessor for the purpose of paying the property taxes on any such vehicle under a lease which is otherwise subject to the taxes imposed by this chapter if such lease requires the lessee to pay such property taxes and if a separate statement of the amount of any such property tax payment is contained in such lease or in any bill rendered pursuant to such lease").

[3] The representative lease agreements between the plaintiff and a lessee provide in relevant part: "REGISTRATION: I will register the [v]ehicle, as required at the state where the [v]ehicle is garaged and pay for all license, title and registration costs. . . ." In certain circumstances, the plaintiff paid the renewal fees to the department, such as when the registration would have expired before the renewal fees were paid to the department and when the plaintiff knew the lessee would not submit the payment, such as when the leased vehicle had been repossessed or was in the process of being repossessed by the plaintiff. The defendant does not dispute that when the owner of a vehicle directly remits the renewal fees payment to the department, there is no tax levied against it.

[4] The monthly lease payment is unaffected by the renewal fees.

[5] The statutory definition of "sale" includes both the sale of services; General Statutes § 12-407 (a) (2) (I); such as the provision of management services at issue in *AirKaman, Inc.*; General Statutes § 12-407 (a) (37) (J); as well as the leasing or renting of tangible personal property, such as a vehicle. General Statutes § 12-407 (a) (2) (J). Accordingly, the court's discussion in *AirKaman, Inc.*, of whether a transaction constituted a "sale" is applicable to the present appeal.