STATE OF NEW YORK

7974

IN SENATE

March 5, 2020

Introduced by Sen. STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue

AN ACT to amend the tax law, in relation to codifying existing guidance on the application of sales and use tax

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph 3 of subdivision (b) of section 1101 of the tax law, as amended by section 21 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

(3) Receipt. **(i)** The amount of the sale price of any property and the charge for any service taxable under this article, including gas and gas service and electricity and electric service of whatever nature, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts and also including any charges by the vendor to the purchaser for shipping or delivery, and, with respect to gas and gas service and electricity and electric service, any charges by the vendor for transportation, transmission or distribution, regardless of whether such charges are separately stated in the written contract, if any, or on the bill rendered to such purchaser and regardless of whether such shipping or delivery or transportation, transmission, or distribution is provided by such vendor or a third party, but excluding any credit for tangible personal property accepted in part payment and intended for resale. For special rules governing computation of receipts, see section eleven hundred eleven **of this article**.

(ii) Receipt shall include consideration received by the vendor from third parties if:

(A) The vendor receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(B) The vendor has an obligation to pass through to the purchaser the price reduction or discount;

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(C) The amount of the consideration attributable to the sale is fixed and determinable by the vendor at the time of the sale of the item to the purchaser; and

(D) One of the following criteria is met:

(I) the purchaser presents a coupon, certificate or other documentation to the vendor to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party shall reimburse any vendor to whom the coupon, certificate or documentation is presented;

(II) the purchaser presents identification as a member of a group or organization entitled to a price reduction or discount; or

(III) the price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

(iii) Subclause (II) of clause (D) of subparagraph (ii) of this paragraph shall not apply to employee discounts that are reimbursed by a third party on sales of motor vehicles.

(iv) For the purposes of subclause (II) of clause (D) of subparagraph (ii) of this paragraph, "identification as a member of a group or organization entitled to a price reduction or discount" shall not include the presentation of a customer loyalty or related rewards program card.

§ 2. This act shall take effect immediately and shall apply to all tax periods for which (a) the statute of limitations for seeking a refund or assessing additional tax are still open under the tax law or (b) for which any claim could be made under the New York false claims act.