

# SENATE, No. 1689

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

**Sponsored by:**

**Senator CHRISTOPHER J. CONNORS**

**District 9 (Atlantic, Burlington and Ocean)**

### **SYNOPSIS**

Excludes value of certain manufacturer rebates from sales price of motor vehicles taxable under sales and use tax.

### **CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT excluding the value of certain manufacturer rebates from  
2 the sales price of motor vehicles taxable under the sales and use  
3 tax, amending P.L.1966, c.30.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7

8 1. Section 2 of P.L.1966, c.30 (C.54:32B-2) is amended to read  
9 as follows:

10 54:32B-2 Definitions.

11 2. Unless the context in which they occur requires otherwise,  
12 the following terms when used in this act shall mean:

13 (a) "Person" includes an individual, trust, partnership, limited  
14 partnership, limited liability company, society, association, joint  
15 stock company, corporation, public corporation or public authority,  
16 estate, receiver, trustee, assignee, referee, fiduciary and any other  
17 legal entity.

18 (b) "Purchase at retail" means a purchase by any person at a  
19 retail sale.

20 (c) "Purchaser" means a person to whom a sale of personal  
21 property is made or to whom a service is furnished.

22 (d) "Receipt" means the amount of the sales price of any  
23 tangible personal property, specified digital product or service  
24 taxable under this act.

25 (e) "Retail sale" means any sale, lease, or rental for any purpose,  
26 other than for resale, sublease, or subrent.

27 (1) For the purposes of this act a sale is for "resale, sublease, or  
28 subrent" if it is a sale (A) for resale either as such or as converted  
29 into or as a component part of a product produced for sale by the  
30 purchaser, including the conversion of natural gas into another  
31 intermediate or end product, other than electricity or thermal  
32 energy, produced for sale by the purchaser, (B) for use by that  
33 person in performing the services subject to tax under subsection  
34 (b) of section 3 where the property so sold becomes a physical  
35 component part of the property upon which the services are  
36 performed or where the property so sold is later actually transferred  
37 to the purchaser of the service in conjunction with the performance  
38 of the service subject to tax, (C) of telecommunications service to a  
39 telecommunications service provider for use as a component part of  
40 telecommunications service provided to an ultimate customer, or  
41 (D) to a person who receives by contract a product transferred  
42 electronically for further commercial broadcast, rebroadcast,  
43 transmission, retransmission, licensing, relicensing, distribution,  
44 redistribution or exhibition of the product, in whole or in part, to  
45 another person, other than rights to redistribute based on statutory

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 or common law doctrine such as fair use.

2 (2) For the purposes of this act, the term "retail sale" includes:  
3 sales of tangible personal property to all contractors, subcontractors  
4 or repairmen of materials and supplies for use by them in erecting  
5 structures for others, or building on, or otherwise improving,  
6 altering, or repairing real property of others.

7 (3) (Deleted by amendment, P.L.2005, c.126).

8 (4) The term "retail sale" does not include:

9 (A) Professional, insurance, or personal service transactions  
10 which involve the transfer of tangible personal property as an  
11 inconsequential element, for which no separate charges are made.

12 (B) The transfer of tangible personal property to a corporation,  
13 solely in consideration for the issuance of its stock, pursuant to a  
14 merger or consolidation effected under the laws of New Jersey or  
15 any other jurisdiction.

16 (C) The distribution of property by a corporation to its  
17 stockholders as a liquidating dividend.

18 (D) The distribution of property by a partnership to its partners  
19 in whole or partial liquidation.

20 (E) The transfer of property to a corporation upon its  
21 organization in consideration for the issuance of its stock.

22 (F) The contribution of property to a partnership in  
23 consideration for a partnership interest therein.

24 (G) The sale of tangible personal property where the purpose of  
25 the vendee is to hold the thing transferred as security for the  
26 performance of an obligation of the seller.

27 (f) "Sale, selling or purchase" means any transfer of title or  
28 possession or both, exchange or barter, rental, lease or license to  
29 use or consume, conditional or otherwise, in any manner or by any  
30 means whatsoever for a consideration, or any agreement therefor,  
31 including the rendering of any service, taxable under this act, for a  
32 consideration or any agreement therefor.

33 (g) "Tangible personal property" means personal property that  
34 can be seen, weighed, measured, felt, or touched, or that is in any  
35 other manner perceptible to the senses. "Tangible personal  
36 property" includes electricity, water, gas, steam, and prewritten  
37 computer software including prewritten computer software  
38 delivered electronically.

39 (h) "Use" means the exercise of any right or power over tangible  
40 personal property, specified digital products, services to property or  
41 products, or services by the purchaser thereof and includes, but is  
42 not limited to, the receiving, storage or any keeping or retention for  
43 any length of time, withdrawal from storage, any distribution, any  
44 installation, any affixation to real or personal property, or any  
45 consumption of such property or products. Use also includes the  
46 exercise of any right or power over intrastate or interstate  
47 telecommunications and prepaid calling services. Use also includes

1 the exercise of any right or power over utility service. Use also  
2 includes the derivation of a direct or indirect benefit from a service.

3 (i) "Seller" means a person making sales, leases or rentals of  
4 personal property or services.

5 (1) The term "seller" includes:

6 (A) A person making sales, leases or rentals of tangible personal  
7 property, specified digital products or services, the receipts from  
8 which are taxed by this act;

9 (B) A person maintaining a place of business in the State or  
10 having an agent maintaining a place of business in the State and  
11 making sales, whether at such place of business or elsewhere, to  
12 persons within the State of tangible personal property, specified  
13 digital products or services, the use of which is taxed by this act;

14 (C) A person who solicits business either by employees,  
15 independent contractors, agents or other representatives or by  
16 distribution of catalogs or other advertising matter and by reason  
17 thereof makes sales to persons within the State of tangible personal  
18 property, specified digital products or services, the use of which is  
19 taxed by this act.

20 A person making sales of tangible personal property, specified  
21 digital products, or services taxable under the "Sales and Use Tax  
22 Act," P.L.1966, c.30 (C.54:32B-1 et seq.) shall be presumed to be  
23 soliciting business through an independent contractor or other  
24 representative if the person making sales enters into an agreement  
25 with an independent contractor having physical presence in this  
26 State or other representative having physical presence in this State,  
27 for a commission or other consideration, under which the  
28 independent contractor or representative directly or indirectly refers  
29 potential customers, whether by a link on an internet website or  
30 otherwise, and the cumulative gross receipts from sales to  
31 customers in this State who were referred by all independent  
32 contractors or representatives that have this type of an agreement  
33 with the person making sales are in excess of \$10,000 during the  
34 preceding four quarterly periods ending on the last day of March,  
35 June, September, and December. This presumption may be rebutted  
36 by proof that the independent contractor or representative with  
37 whom the person making sales has an agreement did not engage in  
38 any solicitation in the State on behalf of the person that would  
39 satisfy the nexus requirements of the United States Constitution  
40 during the four quarterly periods in question. Nothing in this  
41 subparagraph shall be construed to narrow the scope of the terms  
42 independent contractor or other representative for purposes of any  
43 other provision of the "Sales and Use Tax Act," P.L.1966, c.30  
44 (C.54:32B-1 et seq.);

45 (D) Any other person making sales to persons within the State of  
46 tangible personal property, specified digital products or services,  
47 the use of which is taxed by this act, who may be authorized by the  
48 director to collect the tax imposed by this act;

1 (E) The State of New Jersey, any of its agencies,  
2 instrumentalities, public authorities, public corporations (including  
3 a public corporation created pursuant to agreement or compact with  
4 another state) or political subdivisions when such entity sells  
5 services or property of a kind ordinarily sold by private persons;

6 (F) (Deleted by amendment, P.L.2005, c.126);

7 (G) A person who sells, stores, delivers or transports energy to  
8 users or customers in this State whether by mains, lines or pipes  
9 located within this State or by any other means of delivery;

10 (H) A person engaged in collecting charges in the nature of  
11 initiation fees, membership fees or dues for access to or use of the  
12 property or facilities of a health and fitness, athletic, sporting or  
13 shopping club or organization;

14 (I) A person engaged in the business of parking, storing or  
15 garaging motor vehicles;

16 (J) A person making sales, leases, or rentals of tangible personal  
17 property, specified digital products, or taxable services who meets  
18 the criteria set forth in paragraph (1) or (2) of section 1 of P.L.2018,  
19 c.132 (C.54:32B-3.5); and

20 (K) A marketplace facilitator.

21 (2) In addition, when in the opinion of the director it is  
22 necessary for the efficient administration of this act to treat any  
23 salesman, representative, peddler or canvasser as the agent of the  
24 seller, distributor, supervisor or employer under whom the agent  
25 operates or from whom the agent obtains tangible personal property  
26 or a specified digital product sold by the agent or for whom the  
27 agent solicits business, the director may, in the director's discretion,  
28 treat such agent as the seller jointly responsible with the agent's  
29 principal, distributor, supervisor or employer for the collection and  
30 payment over of the tax. A person is an agent of a seller in all  
31 cases, but not limited to such cases, that: (A) the person and the  
32 seller have the relationship of a "related person" described pursuant  
33 to section 2 of P.L.1993, c.170 (C.54:10A-5.5); and (B) the seller  
34 and the person use an identical or substantially similar name,  
35 tradename, trademark, or goodwill, to develop, promote, or  
36 maintain sales, or the person and the seller pay for each other's  
37 services in whole or in part contingent upon the volume or value of  
38 sales, or the person and the seller share a common business plan or  
39 substantially coordinate their business plans, or the person provides  
40 services to, or that inure to the benefit of, the seller related to  
41 developing, promoting, or maintaining the seller's market.

42 (3) Notwithstanding any other provision of law or  
43 administrative action to the contrary, transient space marketplaces  
44 shall be required to collect and pay on behalf of persons engaged in  
45 the business of providing transient accommodations located in this  
46 State the tax for transactions obtained through the transient space  
47 marketplace. For not less than four years following the end of the  
48 calendar year in which the transaction occurred, the transient space

1 marketplace shall maintain the following data for those transactions  
2 consummated through the transient space marketplace:

3 (A) The name of the person who provided the transient  
4 accommodation;

5 (B) The name of the customer who procured occupancy of the  
6 transient accommodation;

7 (C) The address, including any unit designation, of the transient  
8 accommodation;

9 (D) The dates and nightly rates for which the consumer procured  
10 occupancy of the transient accommodation;

11 (E) The municipal transient accommodation registration number,  
12 if applicable;

13 (F) A statement as to whether such booking services will be  
14 provided in connection with (i) short-term rental of the entirety of  
15 such unit, (ii) short-term rental of part of such unit, but not the  
16 entirety of such unit, and/or (iii) short-term rental of the entirety of  
17 such unit, or part thereof, in which a non-short-term occupant will  
18 continue to occupy such unit for the duration of such short-term  
19 rental;

20 (G) The individualized name or number of each such  
21 advertisement or listing connected to such unit and the uniform  
22 resource locator (URL) for each such listing or advertisement,  
23 where applicable; and

24 (H) Such other information as the Division of Taxation may by  
25 rule require.

26 The Division of Taxation may audit transient space marketplaces  
27 as necessary to ensure data accuracy and enforce tax compliance.

28 (j) "Hotel" means a building or portion of a building which is  
29 regularly used and kept open as such for the lodging of guests.  
30 "Hotel" includes an apartment hotel, a motel, inn, and rooming or  
31 boarding house or club, whether or not meals are served, but does  
32 not include a transient accommodation.

33 (k) "Occupancy" means the use or possession or the right to the  
34 use or possession, of any room in a hotel or transient  
35 accommodation.

36 (l) "Occupant" means a person who, for a consideration, uses,  
37 possesses, or has the right to use or possess, any room in a hotel or  
38 transient accommodation under any lease, concession, permit, right  
39 of access, license to use or other agreement, or otherwise.

40 (m) "Permanent resident" means any occupant of any room or  
41 rooms in a hotel or transient accommodation for at least 90  
42 consecutive days shall be considered a permanent resident with  
43 regard to the period of such occupancy.

44 (n) "Room" means any room or rooms of any kind in any part or  
45 portion of a hotel or transient accommodation, which is available  
46 for or let out for any purpose other than a place of assembly.

1 (o) "Admission charge" means the amount paid for admission,  
2 including any service charge and any charge for entertainment or  
3 amusement or for the use of facilities therefor.

4 (p) "Amusement charge" means any admission charge, dues or  
5 charge of a roof garden, cabaret or other similar place.

6 (q) "Charge of a roof garden, cabaret or other similar place"  
7 means any charge made for admission, refreshment, service, or  
8 merchandise at a roof garden, cabaret or other similar place.

9 (r) "Dramatic or musical arts admission charge" means any  
10 admission charge paid for admission to a theater, opera house,  
11 concert hall or other hall or place of assembly for a live, dramatic,  
12 choreographic or musical performance.

13 (s) "Lessor" means any person who is the owner, licensee, or  
14 lessee of any premises, tangible personal property or a specified  
15 digital product which the person leases, subleases, or grants a  
16 license to use to other persons.

17 (t) "Place of amusement" means any place where any facilities  
18 for entertainment, amusement, or sports are provided.

19 (u) "Casual sale" means an isolated or occasional sale of an item  
20 of tangible personal property or a specified digital product by a  
21 person who is not regularly engaged in the business of making retail  
22 sales of such property or product where the item of tangible  
23 personal property or the specified digital product was obtained by  
24 the person making the sale, through purchase or otherwise, for the  
25 person's own use.

26 (v) "Motor vehicle" includes all vehicles propelled otherwise  
27 than by muscular power (excepting such vehicles as run only upon  
28 rails or tracks), trailers, semitrailers, house trailers, or any other  
29 type of vehicle drawn by a motor-driven vehicle, and motorcycles,  
30 designed for operation on the public highways.

31 (w) "Persons required to collect tax" or "persons required to  
32 collect any tax imposed by this act" includes: every seller of  
33 tangible personal property, specified digital products or services;  
34 every recipient of amusement charges; every operator of a hotel or  
35 transient accommodation; every transient space marketplace; every  
36 marketplace facilitator; every seller of a telecommunications  
37 service; every recipient of initiation fees, membership fees or dues  
38 for access to or use of the property or facilities of a health and  
39 fitness, athletic, sporting or shopping club or organization; and  
40 every recipient of charges for parking, storing or garaging a motor  
41 vehicle. Said terms shall also include any officer or employee of a  
42 corporation or of a dissolved corporation who as such officer or  
43 employee is under a duty to act for such corporation in complying  
44 with any requirement of this act and any member of a partnership.

45 (x) "Customer" includes: every purchaser of tangible personal  
46 property, specified digital products or services; every patron paying  
47 or liable for the payment of any amusement charge; every occupant  
48 of a room or rooms in a hotel or transient accommodation; every

1 person paying charges in the nature of initiation fees, membership  
2 fees or dues for access to or use of the property or facilities of a  
3 health and fitness, athletic, sporting or shopping club or  
4 organization; and every purchaser of parking, storage or garaging a  
5 motor vehicle.

6 (y) "Property and services the use of which is subject to tax"  
7 includes: (1) all property sold to a person within the State, whether  
8 or not the sale is made within the State, the use of which property is  
9 subject to tax under section 6 or will become subject to tax when  
10 such property is received by or comes into the possession or control  
11 of such person within the State; (2) all services rendered to a person  
12 within the State, whether or not such services are performed within  
13 the State, upon tangible personal property or a specified digital  
14 product the use of which is subject to tax under section 6 or will  
15 become subject to tax when such property or product is distributed  
16 within the State or is received by or comes into possession or  
17 control of such person within the State; (3) intrastate, interstate, or  
18 international telecommunications sourced to this State pursuant to  
19 section 29 of P.L.2005, c.126 (C.54:32B-3.4); (4) (Deleted by  
20 amendment, P.L.1995, c.184); (5) energy sold, exchanged or  
21 delivered in this State for use in this State; (6) utility service sold,  
22 exchanged or delivered in this State for use in this State; (7) mail  
23 processing services in connection with printed advertising material  
24 distributed in this State; (8) (Deleted by amendment, P.L.2005,  
25 c.126); and (9) services the benefit of which are received in this  
26 State.

27 (z) "Director" means the Director of the Division of Taxation in  
28 the State Department of the Treasury, or any officer, employee or  
29 agency of the Division of Taxation in the Department of the  
30 Treasury duly authorized by the director (directly, or indirectly by  
31 one or more redelegations of authority) to perform the functions  
32 mentioned or described in this act.

33 (aa) "Lease or rental" means any transfer of possession or  
34 control of tangible personal property for a fixed or indeterminate  
35 term for consideration. A "lease or rental" may include future  
36 options to purchase or extend.

37 (1) "Lease or rental" does not include:

38 (A) A transfer of possession or control of property under a  
39 security agreement or deferred payment plan that requires the  
40 transfer of title upon completion of the required payments;

41 (B) A transfer of possession or control of property under an  
42 agreement that requires the transfer of title upon completion of  
43 required payments and payment of an option price does not exceed  
44 the greater of \$100 or one percent of the total required payments; or

45 (C) Providing tangible personal property or a specified digital  
46 product along with an operator for a fixed or indeterminate period  
47 of time. A condition of this exclusion is that the operator is  
48 necessary for the equipment to perform as designed. For the



1 purpose of this subparagraph, an operator must do more than  
2 maintain, inspect, or set-up the tangible personal property or  
3 specified digital product.

4 (2) "Lease or rental" does include agreements covering motor  
5 vehicles and trailers where the amount of consideration may be  
6 increased or decreased by reference to the amount realized upon  
7 sale or disposition of the property as defined in 26 U.S.C.  
8 s.7701(h)(1).

9 (3) The definition of "lease or rental" provided in this subsection  
10 shall be used for the purposes of this act regardless of whether a  
11 transaction is characterized as a lease or rental under generally  
12 accepted accounting principles, the federal Internal Revenue Code  
13 or other provisions of federal, state or local law.

14 (bb) (Deleted by amendment, P.L.2005, c.126).

15 (cc) "Telecommunications service" means the electronic  
16 transmission, conveyance, or routing of voice, data, audio, video, or  
17 any other information or signals to a point, or between or among  
18 points.

19 "Telecommunications service" shall include such transmission,  
20 conveyance, or routing in which computer processing applications  
21 are used to act on the form, code, or protocol of the content for  
22 purposes of transmission, conveyance, or routing without regard to  
23 whether such service is referred to as voice over Internet protocol  
24 services or is classified by the Federal Communications  
25 Commission as enhanced or value added.

26 "Telecommunications service" shall not include:

27 (1) (Deleted by amendment, P.L.2008, c.123);

28 (2) (Deleted by amendment, P.L.2008, c.123);

29 (3) (Deleted by amendment, P.L.2008, c.123);

30 (4) (Deleted by amendment, P.L.2008, c.123);

31 (5) (Deleted by amendment, P.L.2008, c.123);

32 (6) (Deleted by amendment, P.L.2008, c.123);

33 (7) data processing and information services that allow data to  
34 be generated, acquired, stored, processed, or retrieved and delivered  
35 by an electronic transmission to a purchaser where such purchaser's  
36 primary purpose for the underlying transaction is the processed data  
37 or information;

38 (8) installation or maintenance of wiring or equipment on a  
39 customer's premises;

40 (9) tangible personal property;

41 (10) advertising, including but not limited to directory  
42 advertising;

43 (11) billing and collection services provided to third parties;

44 (12) internet access service;

45 (13) radio and television audio and video programming services,  
46 regardless of the medium, including the furnishing of transmission,  
47 conveyance, and routing of such services by the programming  
48 service provider. Radio and television audio and video

1 programming services shall include but not be limited to cable  
2 service as defined in section 47 U.S.C. s.522(6) and audio and video  
3 programming services delivered by commercial mobile radio  
4 service providers, as defined in section 47 C.F.R. 20.3;

5 (14) ancillary services; or

6 (15) digital products delivered electronically, including but not  
7 limited to software, music, video, reading materials, or ringtones.

8 For the purposes of this subsection:

9 "ancillary service" means a service that is associated with or  
10 incidental to the provision of telecommunications services,  
11 including but not limited to detailed telecommunications billing,  
12 directory assistance, vertical service, and voice mail service;  
13 "conference bridging service" means an ancillary service that links  
14 two or more participants of an audio or video conference call and  
15 may include the provision of a telephone number. Conference  
16 bridging service does not include the telecommunications services  
17 used to reach the conference bridge;

18 "detailed telecommunications billing service" means an ancillary  
19 service of separately stating information pertaining to individual  
20 calls on a customer's billing statement;

21 "directory assistance" means an ancillary service of providing  
22 telephone number information or address information or both;

23 "vertical service" means an ancillary service that is offered in  
24 connection with one or more telecommunications services, which  
25 offers advanced calling features that allow customers to identify  
26 callers and to manage multiple calls and call connections, including  
27 conference bridging services; and

28 "voice mail service" means an ancillary service that enables the  
29 customer to store, send, or receive recorded messages. Voice mail  
30 service does not include any vertical service that a customer may be  
31 required to have to utilize the voice mail service. (dd) (1)

32 "Intrastate telecommunications" means a telecommunications  
33 service that originates in one United States state or a United States  
34 territory or possession or federal district, and terminates in the same  
35 United States state or United States territory or possession or  
36 federal district.

37 (2) "Interstate telecommunications" means a  
38 telecommunications service that originates in one United States  
39 state or a United States territory or possession or federal district,  
40 and terminates in a different United States state or United States  
41 territory or possession or federal district.

42 (3) "International telecommunications" means a  
43 telecommunications service that originates or terminates in the  
44 United States and terminates or originates outside the United States,  
45 respectively. "United States" includes the District of Columbia or a  
46 United States territory or possession.

47 (ee) (Deleted by amendment, P.L.2008, c.123)

- 1       (ff) "Natural gas" means any gaseous fuel distributed through a  
2 pipeline system.
- 3       (gg) "Energy" means natural gas or electricity.
- 4       (hh) "Utility service" means the transportation or transmission  
5 of natural gas or electricity by means of mains, wires, lines or pipes,  
6 to users or customers.
- 7       (ii) "Self-generation unit" means a facility located on the user's  
8 property, or on property purchased or leased from the user by the  
9 person owning the self-generation unit and such property is  
10 contiguous to the user's property, which generates electricity to be  
11 used only by that user on the user's property and is not transported  
12 to the user over wires that cross a property line or public  
13 thoroughfare unless the property line or public thoroughfare merely  
14 bifurcates the user's or self-generation unit owner's otherwise  
15 contiguous property.
- 16       (jj) "Co-generation facility" means a facility the primary  
17 purpose of which is the sequential production of electricity and  
18 steam or other forms of useful energy which are used for industrial  
19 or commercial heating or cooling purposes and which is designated  
20 by the Federal Energy Regulatory Commission, or its successor, as  
21 a "qualifying facility" pursuant to the provisions of the "Public  
22 Utility Regulatory Policies Act of 1978," Pub.L.95-617.
- 23       (kk) "Non-utility" means a company engaged in the sale,  
24 exchange or transfer of natural gas that was not subject to the  
25 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to  
26 December 31, 1997.
- 27       (ll) "Pre-paid calling service" means the right to access  
28 exclusively telecommunications services, which shall be paid for in  
29 advance and which enables the origination of calls using an access  
30 number or authorization code, whether manually or electronically  
31 dialed, and that is sold in predetermined units or dollars of which  
32 the number declines with use in a known amount.
- 33       (mm) "Mobile telecommunications service" means the same as  
34 that term is defined in the federal "Mobile Telecommunications  
35 Sourcing Act," 4 U.S.C. s.124 (Pub.L.106-252).
- 36       (nn) (Deleted by amendment, P.L.2008, c.123)
- 37       (oo) (1) "Sales price" is the measure subject to sales tax and  
38 means the total amount of consideration, including cash, credit,  
39 property, and services, for which personal property or services are  
40 sold, leased, or rented, valued in money, whether received in money  
41 or otherwise, without any deduction for the following:
- 42       (A) The seller's cost of the property sold;
- 43       (B) The cost of materials used, labor or service cost, interest,  
44 losses, all costs of transportation to the seller, all taxes imposed on  
45 the seller, and any other expense of the seller;
- 46       (C) Charges by the seller for any services necessary to complete  
47 the sale;
- 48       (D) Delivery charges;

1 (E) (Deleted by amendment, P.L.2011, c.49); and

2 (F) (Deleted by amendment, P.L.2008, c.123).

3 (2) "Sales price" does not include:

4 (A) Discounts, including cash, term, or coupons that are not  
5 reimbursed by a third party, that are allowed by a seller and taken  
6 by a purchaser on a sale;

7 (B) Interest, financing, and carrying charges from credit  
8 extended on the sale of personal property or services, if the amount  
9 is separately stated on the invoice, bill of sale, or similar document  
10 given to the purchaser;

11 (C) Any taxes legally imposed directly on the consumer that are  
12 separately stated on the invoice, bill of sale, or similar document  
13 given to the purchaser;

14 (D) The amount of sales price for which food stamps have been  
15 properly tendered in full or part payment pursuant to the federal  
16 Food Stamp Act of 1977, Pub.L.95-113 (7 U.S.C. s.2011 et seq.);

17 **【or】**

18 (E) Credit for any trade-in of property of the same kind accepted  
19 in part payment and intended for resale if the amount is separately  
20 stated on the invoice, bill of sale, or similar document given to the  
21 purchaser.

22 (F) In the case of the sale of a motor vehicle, a manufacturer  
23 rebate if the rebate is used at the time of the retail sale as a down  
24 payment on, or reduction to the retail sales price of, the motor  
25 vehicle to which the rebate applies. A "manufacturer rebate" means  
26 a cash payment made by the manufacturer of a motor vehicle, acting  
27 as the manufacturer of the motor vehicle and not as an issuer of  
28 credit, to the purchaser of the motor vehicle who is purchasing the  
29 manufacturer's motor vehicle from a retailer.

30 (3) "Sales price" includes consideration received by the seller  
31 from third parties if:

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

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

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

40 (D) One of the following criteria is met:

41 (i) the purchaser presents a coupon, certificate, or other  
42 documentation to the seller to claim a price reduction or discount  
43 where the coupon, certificate, or documentation is authorized,  
44 distributed, or granted by a third party with the understanding that  
45 the third party will reimburse any seller to whom the coupon,  
46 certificate, or documentation is presented;

47 (ii) the purchaser identifies himself to the seller as a member of  
48 a group or organization entitled to a price reduction or discount;

1 provided however, that a preferred customer card that is available to  
2 any patron does not constitute membership in such a group; or

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

7 (4) In the case of a bundled transaction that includes a  
8 telecommunications service, an ancillary service, internet access, or  
9 an audio or video programming service, if the price is attributable to  
10 products that are taxable and products that are nontaxable, the  
11 portion of the price attributable to the nontaxable products is  
12 subject to tax unless the provider can identify by reasonable and  
13 verifiable standards such portion from its books and records that are  
14 kept in the regular course of business for other purposes, including  
15 non-tax purposes.

16 (pp) "Purchase price" means the measure subject to use tax and  
17 has the same meaning as "sales price."

18 (qq) "Sales tax" means the tax imposed on certain transactions  
19 pursuant to the provisions of the "Sales and Use Tax Act,"  
20 P.L.1966, c.30 (C.54:32B-1 et seq.).

21 (rr) "Delivery charges" means charges by the seller for  
22 preparation and delivery to a location designated by the purchaser  
23 of personal property or services including, but not limited to,  
24 transportation, shipping, postage, handling, crating, and packing. If  
25 a shipment includes both exempt and taxable property, the seller  
26 should allocate the delivery charge by using: (1) a percentage based  
27 on the total sales price of the taxable property compared to the total  
28 sales price of all property in the shipment; or (2) a percentage based  
29 on the total weight of the taxable property compared to the total  
30 weight of all property in the shipment. The seller shall tax the  
31 percentage of the delivery charge allocated to the taxable property  
32 but is not required to tax the percentage allocated to the exempt  
33 property.

34 (ss) "Direct mail" means printed material delivered or distributed  
35 by United States mail or other delivery service to a mass audience  
36 or to addresses on a mailing list provided by the purchaser or at the  
37 direction of the purchaser in cases in which the cost of the items are  
38 not billed directly to the recipients. "Direct mail" includes tangible  
39 personal property supplied directly or indirectly by the purchaser to  
40 the direct mail seller for inclusion in the package containing the  
41 printed material. "Direct mail" does not include multiple items of  
42 printed material delivered to a single address.

43 (tt) "Streamlined Sales and Use Tax Agreement" means the  
44 agreement entered into as governed and authorized by the "Uniform  
45 Sales and Use Tax Administration Act," P.L.2001, c.431  
46 (C.54:32B-44 et seq.).

- 1 (uu) "Alcoholic beverages" means beverages that are suitable
- 2 for human consumption and contain one-half of one percent or more
- 3 of alcohol by volume.
- 4 (vv) (Deleted by amendment, P.L.2011, c.49)
- 5 (ww) "Landscaping services" means services that result in a
- 6 capital improvement to land other than structures of any kind
- 7 whatsoever, such as: seeding, sodding or grass plugging of new
- 8 lawns; planting trees, shrubs, hedges, plants; and clearing and
- 9 filling land.
- 10 (xx) "Investigation and security services" means:
- 11 (1) investigation and detective services, including detective
- 12 agencies and private investigators, and fingerprint, polygraph,
- 13 missing person tracing and skip tracing services;
- 14 (2) security guard and patrol services, including bodyguard and
- 15 personal protection, guard dog, guard, patrol, and security services;
- 16 (3) armored car services; and
- 17 (4) security systems services, including security, burglar, and
- 18 fire alarm installation, repair or monitoring services.
- 19 (yy) "Information services" means the furnishing of information
- 20 of any kind, which has been collected, compiled, or analyzed by the
- 21 seller, and provided through any means or method, other than
- 22 personal or individual information which is not incorporated into
- 23 reports furnished to other people.
- 24 (zz) "Specified digital product" means an electronically
- 25 transferred digital audio-visual work, digital audio work, or digital
- 26 book; provided however, that a digital code which provides a
- 27 purchaser with a right to obtain the product shall be treated in the
- 28 same manner as a specified digital product.
- 29 (aaa) "Digital audio-visual work" means a series of related
- 30 images which, when shown in succession, impart an impression of
- 31 motion, together with accompanying sounds, if any.
- 32 (bbb) "Digital audio work" means a work that results from the
- 33 fixation of a series of musical, spoken, or other sounds, including a
- 34 ringtone.
- 35 (ccc) "Digital book" means a work that is generally recognized
- 36 in the ordinary and usual sense as a book.
- 37 (ddd) "Transferred electronically" means obtained by the
- 38 purchaser by means other than tangible storage media.
- 39 (eee) "Ringtone" means a digitized sound file that is
- 40 downloaded onto a device and that may be used to alert the
- 41 purchaser with respect to a communication.
- 42 (fff) "Residence" means a house, condominium, or other
- 43 residential dwelling unit in a building or structure or part of a
- 44 building or structure that is designed, constructed, leased, rented, let
- 45 or hired out, or otherwise made available for use as a residence.
- 46 (ggg) "Transient accommodation" means a room, group of
- 47 rooms, or other living or sleeping space for the lodging of
- 48 occupants, including but not limited to residences or buildings used

1 as residences, that is obtained through a transient space marketplace  
2 or is a professionally managed unit. "Transient accommodation"  
3 does not include: a hotel or hotel room; a room, group of rooms, or  
4 other living or sleeping space used as a place of assembly; a  
5 dormitory or other similar residential facility of an elementary or  
6 secondary school or a college or university; a hospital, nursing  
7 home, or other similar residential facility of a provider of services  
8 for the care, support and treatment of individuals that is licensed by  
9 the State; a campsite, cabin, lean-to, or other similar residential  
10 facility of a campground or an adult or youth camp; a furnished or  
11 unfurnished private residential property, including but not limited to  
12 condominiums, bungalows, single-family homes and similar living  
13 units, where no maid service, room service, linen changing service  
14 or other common hotel services are made available by the lessor and  
15 where the keys to the furnished or unfurnished private residential  
16 property, whether a physical key, access to a keyless locking  
17 mechanism, or other means of physical ingress to the furnished or  
18 unfurnished private residential property, are provided to the lessee  
19 at the location of an offsite real estate broker licensed by the New  
20 Jersey Real Estate Commission pursuant to R.S.45:15-1 et seq.; or  
21 leases of real property with a term of at least 90 consecutive days.

22 (hhh) "Transient space marketplace" means a marketplace or  
23 travel agency through which a person may offer transient  
24 accommodations to customers and through which customers may  
25 arrange for occupancies of transient accommodations. "Transient  
26 space marketplace" does not include a marketplace or travel agency  
27 that exclusively offers transient accommodations in the State owned  
28 by the owner of the marketplace or travel agency.

29 (iii) "Professionally managed unit" means a room, group of  
30 rooms, or other living or sleeping space for the lodging of  
31 occupants in the State, that is offered for rent as a rental unit that  
32 does not share any living or sleeping space with any other rental  
33 unit, and that is directly or indirectly owned or controlled by a  
34 person offering for rent two or more other units during the calendar  
35 year.

36 (jjj) "Obtained through a transient space marketplace" means  
37 that payment for the accommodation is made through a means  
38 provided by the marketplace or travel agency, either directly or  
39 indirectly, regardless of which person or entity receives the  
40 payment, and where the contracting for the accommodation is made  
41 through the marketplace or travel agency.

42 (cf: P.L.2019, c.235, s.13)

43

44 2. This act shall take effect immediately and apply to sales of  
45 motor vehicles on or after the first day of the third month following  
46 enactment.

## STATEMENT

This bill excludes the value of certain manufacturer rebates from the sales price of motor vehicles taxable under the sales and use tax.

A manufacturer rebate is an amount paid by the manufacturer to the customer for buying a product. Typically, a customer pays the full price to a retailer and uses some “proof of purchase” to obtain a rebate from the manufacturer. Although the later rebate payment reduces the customer’s total outlay for the product, the rebate does not reduce the actual payment that the customer made to the retailer, so a rebate does not reduce the amount of the actual sales price or the amount of sales tax due on a sale.

This can become very confusing for the customer in certain motor vehicle purchases involving manufacturers’ rebates in which the car dealer allows the customer to apply the rebate to the purchase at the time of the sale. In these sales the customer turns over the rights to the rebate to the dealer (who later collects it). Because the application of the rebate reduces the amount of the customer’s outlay to the dealer, it appears to the customer that the customer has been provided a discount on the dealer’s sale price, and expects to pay sales tax on the discounted price. However, under current law the customer and the manufacturer have together paid the full sale price, and the customer owes sales tax on that full price: the customer’s outlay *plus* the rebate amount.

This bill provides a special rule for manufacturer rebates in motor vehicle sales. Under the bill, if the rebate is a cash payment granted as a true manufacturer rebate (and not a credit acquired under a credit or financing plan) and the rebate is used at the time of the retail sale to reduce the sale price of the motor vehicle (and not provided later), then the amount of the rebate is not counted as part of the “sales price” on which sales tax liability is calculated.