

# STATE OF NEW YORK

7781--A

2017-2018 Regular Sessions

## IN ASSEMBLY

May 15, 2017

Introduced by M. of A. PEOPLES-STOKES -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to a business tax credit for purchase of data breach insurance; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. Section 210-B of the tax law is amended by adding a new subdivision 53 to read as follows:

53. Data breach insurance credit. (a) A taxpayer that is a business or owner of a business shall be allowed a credit against the tax imposed by this article equal to twenty-five percent of the premium paid during the taxable year for qualified data breach insurance. For purposes of this section, the term "qualified data breach insurance" means coverage provided by an insurance company for expenses or losses in connection with the theft, loss, disclosure, inaccessibility, or manipulation, of data.

(b) In order to qualify for such credit, taxpayers shall adopt and be in compliance with one of the following:

(1) Version 1.0 of the framework for improving critical infrastructure cybersecurity published by the national institute of standards and technology as in effect on February twelfth, two thousand fourteen or subsequent versions or iterations; or

(2) Any similar standard specified by the state comptroller, after consultation with the director of the office of information technology services.

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

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1 (c) In the case of insurance coverage under which amounts are payable  
2 for other than expenses or losses described in paragraph (a) of this  
3 subdivision:

4 (1) No amount shall be treated as premiums for qualified data breach  
5 insurance unless the charge for such insurance is either separately  
6 stated in the contract, or furnished to the policyholder by the insur-  
7 ance company in a separate statement;

8 (2) The amount taken into account as the premium paid or incurred for  
9 such insurance shall not exceed such charge; and

10 (3) No amount shall be treated as paid or incurred for such insurance  
11 if the amount specified in the contract, or furnished to the policy-  
12 holder by the insurance company in a separate statement, as the charge  
13 for such insurance is unreasonably large in relation to the total charg-  
14 es under the contract.

15 (d) Premiums shall be taken into account under paragraph (a) of this  
16 subdivision only if such premiums are paid or incurred in the ordinary  
17 course of the taxpayer's trade or business.

18 (e) This subdivision shall not apply to a business which employs one  
19 hundred and one or more employees.

20 § 2. Section 606 of the tax law is amended by adding a new subsection  
21 (iii) to read as follows:

22 (iii) Data breach insurance credit. (1) A taxpayer that is a business  
23 or owner of a business shall be allowed a credit against the tax imposed  
24 by this article equal to twenty-five percent of the premium paid during  
25 the taxable year for qualified data breach insurance. For purposes of  
26 this section, the term "qualified data breach insurance" means coverage  
27 provided by an insurance company for expenses or losses in connection  
28 with the theft, loss, disclosure, inaccessibility, or manipulation, of  
29 data.

30 (2) In order to qualify for such credit, taxpayers shall adopt and be  
31 in compliance with one of the following:

32 (A) Version 1.0 of the framework for improving critical infrastructure  
33 cybersecurity published by the national institute of standards and tech-  
34 nology as in effect on February twelfth, two thousand fourteen or subse-  
35 quent versions or iterations; or

36 (B) Any similar standard specified by the state comptroller, after  
37 consultation with the director of the office of information technology  
38 services.

39 (3) In the case of insurance coverage under which amounts are payable  
40 for other than expenses or losses described in paragraph one of this  
41 subsection:

42 (A) No amount shall be treated as premiums for qualified data breach  
43 insurance unless the charge for such insurance is either separately  
44 stated in the contract, or furnished to the policyholder by the insur-  
45 ance company in a separate statement;

46 (B) The amount taken into account as the premium paid or incurred for  
47 such insurance shall not exceed such charge; and

48 (C) No amount shall be treated as paid or incurred for such insurance  
49 if the amount specified in the contract, or furnished to the policy-  
50 holder by the insurance company in a separate statement, as the charge  
51 for such insurance is unreasonably large in relation to the total charg-  
52 es under the contract.

53 (4) Premiums shall be taken into account under paragraph one of this  
54 subsection only if such premiums are paid or incurred in the ordinary  
55 course of the taxpayer's trade or business.

1 (5) This subsection shall not apply to a business which employs one  
2 hundred and one or more employees.

3 § 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606  
4 of the tax law is amended by adding a new clause (xliv) to read as  
5 follows:

6 (xliv) Data breach insurance      Amount of credit under subdivision  
7 credit under subsection (iii)      fifty-three of section two hundred  
8 ten-B

9 § 4. This act shall take effect immediately and shall apply to taxable  
10 years beginning on and after the first of January next succeeding the  
11 date on which it shall have become a law and shall remain in effect for  
12 five years after it shall have become a law, when upon such date the  
13 provisions of this act shall expire and be deemed repealed.