

STATE OF NEW YORK

4615--A

2017-2018 Regular Sessions

IN SENATE

February 22, 2017

Introduced by Sens. MARCHIONE, GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- 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:

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

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

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

13 (1) Version 1.0 of the framework for improving critical infrastructure
14 cybersecurity published by the national institute of standards and tech-
15 nology as in effect on February twelfth, two thousand fourteen or subse-
16 quent versions or iterations; or

17 (2) Any similar standard specified by the state comptroller, after
18 consultation with the director of the office of information technology
19 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.