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:

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

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

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

(3) No amount shall be treated as paid or incurred for such insurance if the amount specified in the contract, or furnished to the policyholder by the insurance company in a separate statement, as the charge for such insurance is unreasonably large in relation to the total charges under the contract.

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

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

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

(iii) Data breach insurance credit. (1) 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.

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

(A) 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

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

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

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

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

(C) No amount shall be treated as paid or incurred for such insurance if the amount specified in the contract, or furnished to the policyholder by the insurance company in a separate statement, as the charge for such insurance is unreasonably large in relation to the total charges under the contract.

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

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

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

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

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