

STATE OF NEW YORK

4615

2017-2018 Regular Sessions

IN SENATE

February 22, 2017

Introduced by Sen. MARCHIONE -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

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 52 to read as follows:

3 52. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (xliii) Data breach insurance Amount of credit under subdivision
5 credit under subsection (hhh) fifty-two of section two hundred ten-B

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