

# STATE OF NEW YORK

2087

2021-2022 Regular Sessions

## IN SENATE

January 19, 2021

Introduced by Sens. JORDAN, GOUNARDES -- read twice and ordered printed,  
and when printed to be committed to the Committee on Budget and Revenue

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 55 to read as follows:

3 55. 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 (kkk) to read as follows:

19 (kkk) 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 (xlvi) to read as  
3 follows:

4 <u>(xlvi) Data breach insurance</u>	<u>Amount of credit under subdivision</u>
5 <u>credit under subsection (kkk)</u>	<u>fifty-five of section two hundred</u>
6	<u>ten-B</u>

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11 provisions of this act shall expire and be deemed repealed.