# STATE OF NEW YORK

4959

2021-2022 Regular Sessions

# IN SENATE

February 19, 2021

Introduced by Sen. KRUEGER -- 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 creating an excise tax on the collection of consumer data by commercial data collectors

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

Section 1. The tax law is amended by adding a new section 186-h to read as follows:

**§ 186-h. Excise tax on the collection of consumer data by commercial data collectors. 1. Imposition of tax. There is hereby imposed a monthly excise tax on the collection of the consumer data of individual New York consumers by commercial data collectors. The tax shall apply regardless of the format, electronic or otherwise, in which the consumer data is collected by the commercial data collector.**

**2. Definitions. As used in this section:**

**(a) The words "commercial data collector" mean a for-profit entity that:**

**(i) collects, maintains, uses, processes, sells or shares consumer data in support of its business activities; and**

**(ii) collects consumer data, other than consumer contact information, on more than one million individual New York consumers in a month within the calendar year.**

**(b) The word "consumer" means an individual who purchases goods or services from a commercial data collector or uses the services of a commercial data collector, whether charged for those services or not.**

**(c) The words "consumer contact information" mean (i) a consumer's email address, telephone number, telefax number, home address, mailing address; and (ii) credit card information necessary to engage in a sales transaction.**

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

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(d) The words "consumer data" mean any information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked with a consumer, whether directly submitted to the commercial data collector by the consumer or derived from other sources.

(e) The words "New York consumer" mean a consumer whose primary residence, as defined in article twenty-two of this chapter, is in New York state.

3. Rate of tax. The tax is imposed on commercial data collectors at the following rates based on the number of New York consumers a commercial data collector collects data on within the month.

| New York consumers | tax |
|---|---|
| Less than or equal to one million | 0 |
| over one million to two million | five cents per month on the number of New York consumers over one million but not more than two million |
| over two million to three million | fifty thousand dollars per month plus ten cents per month on the number of New York consumers over two million but not more than three million |
| over three million to four million | one hundred fifty thousand dollars per month plus fifteen cents per month on the number of New York consumers over three million but not more than four million |
| over four million to five million | three hundred thousand dollars per month plus twenty cents per month on the number of New York consumers over four million but not more than five million |
| over five million to six million | five hundred thousand dollars per month plus twenty-five cents per month on the number of New York consumers over five million but not more than six million |
| over six million to seven million | seven hundred fifty thousand dollars plus thirty cents per month on the number of New York consumers over six million but not more than seven million |
| over seven million to eight million | one million, fifty thousand dollars per month plus thirty-five cents per month on the number of New York consumers over seven million but not more than eight million |
| over eight million to nine million | one million, four hundred thousand dollars per month plus forty cents per month on the number of New York consumers over eight million but not more than nine million |
| over nine million to ten million | one million, eight hundred thousand dollars per month plus forty-five |

| | |
|---|---|
| | cents per month on the number of New York consumers over nine million but not more than ten million |
| over ten million | two million, two hundred fifty thousand dollars per month plus fifty cents per month on the number of New York consumers over ten million. |

4. Taxpayers. (a) There shall be a rebuttable presumption that a consumer whose information on record with or available to a commercial data collector indicates a New York home address, a New York mailing address, or an internet protocol address connected with a New York location is a New York consumer for purposes of this section. The presumption may be rebutted by evidence that a consumer's primary residence, as defined in article twenty-two of this chapter, is outside New York.

(b) A New York consumer shall be counted only once in the calculation of the monthly excise tax imposed on a commercial data collector.

(c) Business entities having common ownership as defined in section 1563(a) of the internal revenue code shall be treated as a single taxpayer for purposes of meeting the definition of commercial data collector under this section. The entities constituting the single taxpayer are jointly and severally liable for any tax due.

(d) The single member of a single member limited liability company shall be treated as a consumer under this section.

5. Alternative methods for calculating tax liability. A commercial data collector and the department may agree on a methodology for determining the number of New York consumers for the purpose of calculating the tax.

6. Credit against tax paid to another jurisdiction. A commercial data collector that has paid tax under this section may claim a credit against the tax paid with respect to a New York consumer when another state imposes an excise tax identical to the tax imposed under this section with respect to the same consumer.

7. Recordkeeping. A commercial data collector shall maintain records as required by the commissioner.

8. Returns. (a) A commercial data collector shall file a monthly return as prescribed by the commissioner.

(b) A commercial data collector that pays the tax imposed under this section in a given month must file a return in subsequent months until it reports no tax liability for twelve consecutive months.

9. Administrative procedures. The administrative procedures set forth in article twenty-seven of this chapter shall apply unless specific provisions to the contrary are set forth in this section.

10. The department of taxation and finance may prescribe such rules and regulations as may be necessary to carry out this section.

§ 2. This act shall take effect immediately and shall apply to all tax years commencing on or after the first day of the first month that begins more than six months after the law takes effect.