

# STATE OF NEW YORK

4871

2023-2024 Regular Sessions

## IN SENATE

February 16, 2023

Introduced by Sen. ASHBY -- 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:

Section 1. Section 210-B of the tax law is amended by adding a new subdivision 59 to read as follows:

59. 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.

(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

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

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1 stated in the contract, or furnished to the policyholder by the insur-  
2 ance company in a separate statement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55 (1) Data breach insurance                      Amount of credit under subdivision  
56 credit under subsection (ooo)              fifty-nine of section two hundred

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