SENATE BILL 779

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO TAXATION; REDUCING INCOME TAX RATES; PROVIDING AN INCOME TAX DEDUCTION FOR CHARITABLE CONTRIBUTIONS; ELIMINATING THE GROSS RECEIPTS AND COMPENSATING TAXES ON THE RECEIPTS OF AND SALES TO CERTAIN NONPROFIT ENTITIES; ADJUSTING THE MUNICIPAL GROSS RECEIPTS TAX DISTRIBUTION; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-1-6.4 NMSA 1978 (being Laws 1983, Chapter 211, Section 9, as amended) is amended to read:

"7-1-6.4. DISTRIBUTION--MUNICIPALITY FROM GROSS RECEIPTS TAX.--

A. Except as provided in Subsection B of this section, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality in an amount, subject to

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any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the product of the quotient of [~~one and two hundred twenty-five thousandths~~] <u>eight hundred thirty-five thousandths</u> percent divided by the tax rate imposed by Section 7-9-4 NMSA 1978 [~~times~~] <u>multiplied by</u> the net receipts for the month attributable to the gross receipts tax from business locations:

(1) within that municipality;

(2) on land owned by the state, commonly known as the "state fair grounds", within the exterior boundaries of that municipality;

(3) outside the boundaries of any municipality on land owned by that municipality; and

(4) on an Indian reservation or pueblo grant in an area that is contiguous to that municipality and in which the municipality performs services pursuant to a contract between the municipality and the Indian tribe or Indian pueblo if:

(a) the contract describes an area in which the municipality is required to perform services and requires the municipality to perform services that are substantially the same as the services the municipality performs for itself; and

(b) the governing body of the municipality has submitted a copy of the contract to the secretary.

B. If the reduction made by Laws 1991, Chapter 9, Section 9 to the distribution under this section impairs the ability of a municipality to meet its principal or interest payment obligations for revenue bonds outstanding prior to July 1, 1991 that are secured by the pledge of all or part of the municipality's revenue from the distribution made under this section, then the amount distributed pursuant to this section to that municipality shall be increased by an amount sufficient to meet any required payment, provided that the distribution amount does not exceed the amount that would have been due that municipality under this section as it was in effect on June 30, 1992."

Section 2. Section 7-2-2 NMSA 1978 (being Laws 1986, Chapter 20, Section 26, as amended) is amended to read:

"7-2-2. DEFINITIONS.--For the purpose of the Income Tax Act and unless the context requires otherwise:

A. "adjusted gross income" means adjusted gross income as defined in Section 62 of the Internal Revenue Code, as that section may be amended or renumbered;

B. "base income":

(1) means, for estates and trusts, that part of the estate's or trust's income defined as taxable income and upon which the federal income tax is calculated in the Internal Revenue Code for income tax purposes plus, for

taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and taken by the taxpayer for that year;

(2) means, for taxpayers other than estates or trusts, that part of the taxpayer's income defined as adjusted gross income plus, for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and taken by the taxpayer for that year; and

(3) includes, for all taxpayers, any other income of the taxpayer not included in adjusted gross income but upon which a federal tax is calculated pursuant to the Internal Revenue Code for income tax purposes, except amounts for which a calculation of tax is made pursuant to Section 55 of the Internal Revenue Code, as that section may be amended or renumbered; "base income" also includes interest received on a state or local bond;

C. "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services;

D. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "fiduciary" means a guardian, trustee, executor, administrator, committee, conservator, receiver, individual or corporation acting in any fiduciary capacity;

F. "filing status" means "married filing joint returns", "married filing separate returns", "head of household", "surviving spouse" and "single", as those terms are generally defined for federal tax purposes;

G. "fiscal year" means any accounting period of twelve months ending on the last day of any month other than December;

H. "head of household" means "head of household" as generally defined for federal income tax purposes;

I. "individual" means a natural person, an estate, a trust or a fiduciary acting for a natural person, trust or estate;

J. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended;

K. "lump-sum amount" means an amount that, for the purpose of determining liability for federal income tax, was not included in adjusted gross income but upon which the five-year-averaging or the ten-year-averaging method of tax computation provided in Section 402 of the Internal Revenue Code, as that section may be amended or renumbered, was applied;

L. "modified gross income" means all income of the taxpayer and, if any, the taxpayer's spouse and dependents, undiminished by losses and from whatever source derived, including:

(1) compensation;

(2) net profit derived from business;

(3) gains derived from dealings in property;

(4) interest;

(5) net rents;

(6) royalties;

(7) dividends;

(8) alimony and separate maintenance payments;

(9) annuities;

(10) income from life insurance and endowment contracts;

(11) pensions;

(12) discharge of indebtedness;

(13) distributive share of partnership income;

(14) income in respect of a decedent;

(15) income from an interest in an estate or trust;

(16) social security benefits;

(17) unemployment compensation benefits;

(18) workers' compensation benefits;

(19) public assistance and welfare benefits;

(20) cost-of-living allowances; and

(21) gifts;

M. "modified gross income" does not include:

(1) payments for hospital, dental, medical or drug expenses whether made to or on behalf of the taxpayer;

(2) the value of room and board provided by federal, state or local governments or by private individuals or agencies based upon financial need and not as a form of compensation;

(3) payments made pursuant to a federal, state or local government program directly or indirectly to a third party on behalf of the taxpayer when identified to a particular use or invoice by the payer; or

(4) payments made pursuant to Sections 7-2-14, [~~7-2-14.1~~] 7-2-18, 7-2-18.1 and 7-3-9 NMSA 1978;

N. "net income" means, for estates and trusts, base income adjusted to exclude amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States and means, for taxpayers other than estates or trusts, base income adjusted to exclude:

(1) an amount equal to the standard deduction allowed the taxpayer for the taxpayer's taxable year by

Section 63 of the Internal Revenue Code, as that section may be amended or renumbered;

(2) an amount equal to the itemized deductions, as defined in Section 63 of the Internal Revenue Code, as that section may be amended or renumbered, allowed the taxpayer for the taxpayer's taxable year less the amount excluded pursuant to Paragraph (1) of this subsection;

(3) an amount equal to the product of the exemption amount allowed for the taxpayer's taxable year by Section 151 of the Internal Revenue Code, as that section may be amended or renumbered, multiplied by the number of personal exemptions allowed for federal income tax purposes;

(4) income from obligations of the United States of America less expenses incurred to earn that income;

(5) other amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States;

(6) for taxable years that began prior to January 1, 1991, an amount equal to the sum of:

(a) net operating loss carryback deductions to that year from taxable years beginning prior to January 1, 1991 claimed and allowed, as provided by the Internal Revenue Code; and

(b) net operating loss carryover deductions to that year claimed and allowed; and

(7) for taxable years beginning on or after January 1, 1991, an amount equal to the sum of any net operating loss carryover deductions to that year claimed and allowed, provided that the amount of any net operating loss carryover from a taxable year beginning on or after January 1, 1991 may be excluded only as follows:

(a) in the case of a timely filed return, in the taxable year immediately following the taxable year for which the return is filed; or

(b) in the case of amended returns or original returns not timely filed, in the first taxable year beginning after the date on which the return or amended return establishing the net operating loss is filed; and

(c) in either case, if the net operating loss carryover exceeds the amount of net income exclusive of the net operating loss carryover for the taxable year to which the exclusion first applies, in the next four succeeding taxable years in turn until the net operating loss carryover is exhausted; in no event shall a net operating loss carryover be excluded in any taxable year after the fourth taxable year beginning after the taxable year to which the exclusion first applies;

O. "net operating loss" means any net operating loss, as defined by Section 172(c) of the Internal Revenue Code, as that section may be amended or renumbered, for a taxable year as further increased by the income, if any, from obligations of the United States for that year less related expenses;

P. "net operating loss carryover" means the amount, or any portion of the amount, of a net operating loss for any taxable year that, pursuant to Paragraph (6) or (7) of Subsection N of this section, may be excluded from base income;

Q. "nonresident" means every individual not a resident of this state;

R. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, joint venture, syndicate or other association; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or agency, department or instrumentality thereof;

S. "resident" means an individual who is domiciled in this state during any part of the taxable year; but any individual who, on or before the last day of the taxable year, changed his place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state is not a resident for the purposes of the Income Tax Act;

T. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

U. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States or any political subdivision of a foreign country;

V. "state or local bond" means a bond issued by a state other than New Mexico or by a local government other than one of New Mexico's political subdivisions, the interest from which is excluded from income for federal income tax purposes under Section 103 of the Internal Revenue Code, as that section may be amended or renumbered;

W. "surviving spouse" means "surviving spouse" as generally defined for federal income tax purposes;

X. "taxable income" means net income less any lump-sum amount;

Y. "taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Income Tax Act and includes, in the case of the return made for a fractional part of a year under the provisions of the Income Tax Act, the period for which the return is made; [~~and~~]

Z. "taxpayer" means any individual subject to the tax imposed by the Income Tax Act; <u>and</u>

<u>AA. "zero bracket amount" means the maximum amount of taxable income in the first bracket of the tax rate table</u>

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for a filing status, for which bracket the amount of tax due is zero."

Section 3. Section 7-2-7 NMSA 1978 (being Laws 1994, Chapter 5, Section 20, as amended) is amended to read:

"7-2-7. INDIVIDUAL INCOME TAX RATES.--The tax imposed by Section 7-2-3 NMSA 1978 shall be at the following rates for any taxable year beginning on or after January 1, [~~1998~~] 2001:

A. For married individuals filing separate returns:

If the taxable income is:	The tax shall be:
[~~Not over $4,000~~	~~1.7% of taxable income~~
~~Over $ 4,000 but not over $ 8,000~~	~~$ 68.00 plus 3.2% of excess over $ 4,000~~
~~Over $ 8,000 but not over $ 12,000~~	~~$ 196 plus 4.7% of excess over $ 8,000~~
~~Over $ 12,000 but not over $ 20,000~~	~~$ 384 plus 6.0% of excess over $ 12,000~~
~~Over $ 20,000 but not over $ 32,000~~	~~$ 864 plus 7.1% of excess over $ 20,000~~
~~Over $ 32,000 but not over $ 50,000~~	~~$ 1,716 plus 7.9% of excess over $ 32,000~~
~~Over $ 50,000~~	~~$ 3,138 plus 8.2% of excess over $ 50,000~~]
Not over $4,000	$ 0
Over $ 4,000 but not over $ 8,000	2.6% of excess over $4,000

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Over $ 8,000 but not over $ 12,000	$ 104 plus 3.8% of excess over $8,000
Over $ 12,000 but not over $ 20,000	$ 256 plus 4.8% of excess over $12,000
Over $ 20,000 but not over $ 32,000	$ 640 plus 5.7% of excess over $20,000
Over $ 32,000 but not over $ 50,000	$ 1,324 plus 6.3% of excess over $32,000
Over $ 50,000	$ 2,458 plus 6.6% of excess over $50,000.

B. For surviving spouses and married individuals filing joint returns:

If the taxable income is:	The tax shall be:
[~~Not over $8,000~~	~~1.7% of taxable income~~
~~Over $ 8,000 but not over $ 16,000~~	~~$ 136 plus 3.2% of excess over $ 8,000~~
~~Over $ 16,000 but not over $ 24,000~~	~~$ 392 plus 4.7% of excess over $ 16,000~~
~~Over $ 24,000 but not over $ 40,000~~	~~$ 768 plus 6.0% of excess over $ 24,000~~
~~Over $ 40,000 but not over $ 64,000~~	~~$ 1,728 plus 7.1% of excess over $ 40,000~~
~~Over $ 64,000 but not over $100,000~~	~~$ 3,432 plus 7.9% of excess over $ 64,000~~
~~Over $100,000~~	~~$ 6,276 plus 8.2% of~~

	~~excess over $100,000~~]
Not over $8,000	$ 0
Over $ 8,000 but not over $ 16,000	2.6% of excess over $8,000
Over $ 16,000 but not over $ 24,000	$ 208 plus 3.8% of excess over $16,000
Over $ 24,000 but not over $ 40,000	$ 512 plus 4.8% of excess over $24,000
Over $ 40,000 but not over $ 64,000	$ 1,280 plus 5.7% of excess over $40,000
Over $ 64,000 but not over $100,000	$2,648 plus 6.3% of excess over $64,000
Over $100,000	$4,916 plus 6.6% of excess over $100,000.

C. For single individuals and for estates and trusts:

If the taxable income is:	The tax shall be:
[~~Not over $5,500~~	~~1.7% of taxable income~~
~~Over $ 5,500 but not over $ 11,000~~	~~$ 93.50 plus 3.2% of excess over $ 5,500~~
~~Over $ 11,000 but not over $ 16,000~~	~~$ 269.50 plus 4.7% of excess over $ 11,000~~
~~Over $ 16,000 but not over $ 26,000~~	~~$ 504.50 plus 6.0% of excess over $ 16,000~~
~~Over $ 26,000 but not over $ 42,000~~	~~$1,104.50 plus 7.1% of~~

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	~~excess over $ 26,000~~
~~Over $ 42,000 but not over $ 65,000~~	~~$2,240.50 plus 7.9% of excess over $ 42,000~~
~~Over $ 65,000~~	~~$4,057.50 plus 8.2% of excess over $ 65,000~~]
Not over $5,500	$ 0
Over $ 5,500 but not over $ 11,000	2.6% of excess over $5,500
Over $ 11,000 but not over $ 16,000	$ 143 plus 3.8% of excess over $11,000
Over $ 16,000 but not over $ 26,000	$ 333 plus 4.8% of excess over $16,000
Over $ 26,000 but not over $ 42,000	$ 813 plus 5.7% of excess over $26,000
Over $ 42,000 but not over $ 65,000	$1,725 plus 6.3% of excess over $42,000
Over $ 65,000	$3,174 plus 6.6% of excess over $65,000.

D. For heads of household filing returns:

If the taxable income is:	The tax shall be:
[~~Not over $7,000~~	~~1.7% of taxable income~~
~~Over $ 7,000 but not over $ 14,000~~	~~$ 119 plus 3.2% of excess over $ 7,000~~
~~Over $ 14,000 but not over $ 20,000~~	~~$ 343 plus 4.7% of excess over $ 14,000~~

~~Over $ 20,000 but not over $ 33,000~~	~~$ 625 plus 6.0% of excess over $ 20,000~~
~~Over $ 33,000 but not over $ 53,000~~	~~$1,405 plus 7.1% of excess over $ 33,000~~
~~Over $ 53,000 but not over $ 83,000~~	~~$2,825 plus 7.9% of excess over $ 53,000~~
~~Over $83,000~~	~~$5,195 plus 8.2% of excess over $ 83,000~~]
Not over $7,000	$ 0
Over $ 7,000 but not over $ 14,000	2.6% of excess over $7,000
Over $ 14,000 but not over $ 20,000	$ 182 plus 3.8% of excess over $14,000
Over $ 20,000 but not over $ 33,000	$ 410 plus 4.8% of excess over $20,000
Over $ 33,000 but not over $ 53,000	$ 1,034 plus 5.7% of excess over $33,000
Over $ 53,000 but not over $ 83,000	$2,174 plus 6.3% of excess over $53,000
Over $ 83,000	$4,064 plus 6.6% of excess over $83,000.

E. The tax on the sum of any lump-sum amounts included in net income is an amount equal to five multiplied by the difference between:

(1) the amount of tax due on the taxpayer's

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taxable income; and

(2) the amount of tax that would be due on an amount equal to the taxpayer's taxable income and twenty percent of the taxpayer's lump-sum amounts included in net income."

Section 4. Section 7-2-12 NMSA 1978 (being Laws 1965, Chapter 202, Section 10, as amended) is amended to read:

"7-2-12. TAXPAYER RETURNS--PAYMENT OF TAX.--

A. Every resident of this state and every individual deriving income from any business transaction, property or employment within this state and not exempt from tax under the Income Tax Act [~~who~~] shall file a complete tax return with the department in form and content as prescribed by the secretary if the individual:

(1) is required by the laws of the United States to file a federal income tax return [~~shall file a complete tax return with the department in form and content as prescribed by the secretary~~] or files a federal income tax return; and

(2) the taxpayer's taxable income exceeds the zero bracket amount for the taxpayer's filing status.

B. Unless otherwise required under the Income Tax Act or prescription of the secretary, in completing a return for a taxable year, the taxpayer shall declare the same filing status and number of personal exemptions as the

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taxpayer declared for federal income tax purposes for that same taxable year or, if the taxpayer was not required to file a federal income tax return for the taxable year, the filing status and number of personal exemptions that would have been required or allowed for that taxpayer by the Internal Revenue Code and regulations thereunder for the taxable year.

C. The return required and the tax imposed on individuals under the Income Tax Act are due and payment is required on or before the fifteenth day of the fourth month following the end of the taxable year."

Section 5. A new section of the Income Tax Act is enacted to read:

"[NEW MATERIAL] DEDUCTION--CHARITABLE CONTRIBUTIONS.--

A. A taxpayer who files an individual New Mexico income tax return may claim a deduction from net income in an amount equal to the amount of charitable contributions made by the taxpayer in the taxable year for which the deduction is being claimed. Taxpayers having income both within and without this state shall apportion this deduction in accordance with the regulations of the secretary.

B. A husband and wife who file separate returns for the taxable year in which they could have filed a joint return may each claim only one-half of the deduction that would have been allowed on a joint return.

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C. As used in this section, "charitable contribution" means a "charitable contribution" as defined in Section 170(c) of the Internal Revenue Code and determined pursuant to that section to be allowable for deduction, whether or not the contribution was deducted for federal income tax purposes for the taxable year."

Section 6. Section 7-9-15 NMSA 1978 (being Laws 1970, Chapter 12, Section 1, as amended) is amended to read:

"7-9-15. EXEMPTION--COMPENSATING TAX--CERTAIN ORGANIZATIONS.--

A. Exempted from the compensating tax is the use of property by youth organizations that demonstrate to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of [~~1954~~] 1986, as amended or renumbered, in the conduct of functions described in Section 501(c)(3) of that code. The use of property as an ingredient or component part of a construction project is not a use in the conduct of functions described in Section 501(c)(3) of that code. This section does not apply to the use of property in an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of [~~1954~~] 1986, as amended or renumbered.

B. As used in this section, "youth organization" means an organization that has been granted an exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or renumbered, and whose sole purpose is to provide activities or services exclusively for individuals who are less than eighteen years old."

Section 7. Section 7-9-29 NMSA 1978 (being Laws 1970, Chapter 12, Section 3, as amended) is amended to read:

"7-9-29. EXEMPTION--GROSS RECEIPTS TAX--CERTAIN ORGANIZATIONS.--

A. Exempted from the gross receipts tax are the receipts of youth organizations that demonstrate to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of [~~1954~~] 1986, as amended or renumbered.

B. Exempted from the gross receipts tax are the receipts from carrying on chamber of commerce, visitor bureau and convention bureau functions of organizations that demonstrate to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described

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in Section 501(c)(6) of the United States Internal Revenue Code of [~~1954~~] 1986, as amended or renumbered.

C. This section does not apply to receipts derived from an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of [~~1954~~] 1986, as amended or renumbered.

D. As used in this section, "youth organization" means an organization that has been granted an exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or renumbered, and whose sole purpose is to provide activities or services exclusively for individuals who are less than eighteen years old."

Section 8. Section 7-9-60 NMSA 1978 (being Laws 1970, Chapter 12, Section 4, as amended) is amended to read:

"7-9-60. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS TAX--SALES TO CERTAIN ORGANIZATIONS.--

A. Except as provided otherwise in Subsection B of this section, receipts from selling tangible personal property to youth organizations that have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended or renumbered, may be deducted from

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gross receipts or from governmental gross receipts if the sale is made to an organization that delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate shall employ the tangible personal property in the conduct of functions described in Section 501(c)(3) of that code and shall not employ the tangible personal property in the conduct of an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1986, as amended or renumbered.

B. The deduction provided by this section does not apply to receipts from selling tangible personal property that will become an ingredient or component part of a construction project or from selling metalliferous mineral ore.

C. As used in this section, "youth organization" means an organization that has been granted an exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or renumbered, and whose sole purpose is to provide activities or services exclusively for individuals who are less than eighteen years old."

Section 9. Section 7-9-73.1 NMSA 1978 (being Laws 1991, Chapter 8, Section 3, as amended) is amended to read:

"7-9-73.1. DEDUCTION--GROSS RECEIPTS--HOSPITALS.--Fifty percent of the receipts of for-profit hospitals licensed by the department of health may be deducted from gross receipts; provided, this deduction may be applied only to the taxable gross receipts remaining after all other appropriate deductions have been taken."

Section 10. APPLICABILITY.--The provisions of Sections 2 through 5 of this act apply to taxable years beginning on or after January 1, 2001.

Section 11. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 6 through 9 of this act is July 1, 2001.

B. The effective date of the provisions of Section 1 of this act is August 1, 2001.

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