

1 **SENATE FLOOR VERSION**

2 February 26, 2024

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1283

6 By: Treat, Jett, and Rogers

7 An Act relating to sales tax; amending 68 O.S. 2021,
8 Section 1352, as amended by Section 1 of Enrolled
9 House Bill No. 1955 of the 2nd Session of the 59th
10 Oklahoma Legislature, which relates to definitions;
11 defining terms; modifying definition; and updating
12 statutory language.

13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. AMENDATORY 68 O.S. 2021, Section 1352, as
15 amended by Section 1 of Enrolled House Bill No. 1955 of the 2nd
16 Session of the 59th Oklahoma Legislature, is amended to read as
17 follows:

18 Section 1352. As used in the Oklahoma Sales Tax Code:

19 1. "Alcoholic beverages" means beverages that are suitable for
20 human consumption and contain one-half of one percent (0.5%) or more
21 of alcohol by volume;

22 2. "Bottled water" means water that is placed in a safety
23 sealed container or package for human consumption. Bottled water is
24 calorie-free and does not contain sweeteners or other additives
except that it may contain:

- 1 a. antimicrobial agents,
- 2 b. fluoride,
- 3 c. carbonation,
- 4 d. vitamins, minerals, and electrolytes,
- 5 e. oxygen,
- 6 f. preservatives, and
- 7 g. only those flavors, extracts, or essences derived from
- 8 a spice or fruit;

9 3. "Bundled transaction" means the retail sale of two or more
10 products, except real property and services to real property, where
11 the products are otherwise distinct and identifiable, and the
12 products are sold for one nonitemized price. A ~~"bundled~~
13 ~~transaction"~~ bundled transaction does not include the sale of any
14 products in which the sales price varies, or is negotiable, based on
15 the selection by the purchaser of the products included in the
16 transaction. As used in this paragraph:

- 17 a. "distinct and identifiable products" does not include:
 - 18 (1) packaging such as containers, boxes, sacks, bags,
 - 19 and bottles, or other materials such as wrapping,
 - 20 labels, tags, and instruction guides, that
 - 21 accompany the retail sale of the products and are
 - 22 incidental or immaterial to the retail sale
 - 23 thereof, including but not limited to, grocery

1 sacks, shoeboxes, dry cleaning garment bags and
2 express delivery envelopes and boxes,

3 (2) a product provided free of charge with the
4 required purchase of another product. A product
5 is provided free of charge if the sales price of
6 the product purchased does not vary depending on
7 the inclusion of the product provided free of
8 charge, or

9 (3) items included in the definition of gross
10 receipts or sales price, pursuant to this
11 section,

12 b. "one nonitemized price" does not include a price that
13 is separately identified by product on binding sales
14 or other supporting sales-related documentation made
15 available to the customer in paper or electronic form
16 including, but not limited to, an invoice, bill of
17 sale, receipt, contract, service agreement, lease
18 agreement, periodic notice of rates and services, rate
19 card, or price list,

20 A transaction that otherwise meets the definition of a
21 bundled transaction shall not be considered a bundled
22 transaction if it is:

23 (1) the retail sale of tangible personal property and
24 a service where the tangible personal property is

1 essential to the use of the service, and is
2 provided exclusively in connection with the
3 service, and the true object of the transaction
4 is the service,

5 (2) the retail sale of services where one service is
6 provided that is essential to the use or receipt
7 of a second service and the first service is
8 provided exclusively in connection with the
9 second service and the true object of the
10 transaction is the second service,

11 (3) a transaction that includes taxable products and
12 nontaxable products and the purchase price or
13 sales price of the taxable products is de
14 minimis. For purposes of this subdivision, "de
15 minimis" means the seller's purchase price or
16 sales price of taxable products is ten percent
17 (10%) or less of the total purchase price or
18 sales price of the bundled products. Sellers
19 shall use either the purchase price or the sales
20 price of the products to determine if the taxable
21 products are de minimis. Sellers may not use a
22 combination of the purchase price and sales price
23 of the products to determine if the taxable
24 products are de minimis. Sellers shall use the

1 full term of a service contract to determine if
2 the taxable products are de minimis, or

3 (4) the retail sale of exempt tangible personal
4 property and taxable tangible personal property
5 where:

6 (a) the transaction includes food and food
7 ingredients, drugs, durable medical
8 equipment, mobility enhancing equipment,
9 over-the-counter drugs, prosthetic devices
10 or medical supplies, and

11 (b) the seller's purchase price or sales price
12 of the taxable tangible personal property is
13 fifty percent (50%) or less of the total
14 purchase price or sales price of the bundled
15 tangible personal property. Sellers may not
16 use a combination of the purchase price and
17 sales price of the tangible personal
18 property when making the fifty percent (50%)
19 determination for a transaction;

20 ~~3.~~ 4. "Business" means any activity engaged in or caused to be
21 engaged in by any person with the object of gain, benefit, or
22 advantage, either direct or indirect;

23 ~~4.~~ 5. "Candy" means a preparation of sugar, honey, or other
24 natural or artificial sweeteners in combination with chocolate,

1 fruits, nuts, or other ingredients or flavorings in the form of
2 bars, drops, or pieces. Candy shall not include any preparation
3 containing flour or requiring refrigeration;

4 ~~5.~~ 6. "Commission" or "Tax Commission" means the Oklahoma Tax
5 Commission;

6 ~~6.~~ 7. "Computer" means an electronic device that accepts
7 information in digital or similar form and manipulates it for a
8 result based on a sequence of instructions;

9 ~~7.~~ 8. "Computer software" means a set of coded instructions
10 designed to cause a ~~"computer"~~ computer or automatic data processing
11 equipment to perform a task;

12 ~~8.~~ 9. "Consumer" or "user" means a person to whom a taxable
13 sale of tangible personal property is made or to whom a taxable
14 service is furnished. ~~"Consumer"~~ Consumer or ~~"user"~~ user includes
15 all contractors to whom a taxable sale of materials, supplies,
16 equipment, or other tangible personal property is made or to whom a
17 taxable service is furnished to be used or consumed in the
18 performance of any contract;

19 ~~9.~~ 10. "Contractor" means any person who performs any
20 improvement upon real property and who, as a necessary and
21 incidental part of performing such improvement, incorporates
22 tangible personal property belonging to or purchased by the person
23 into the real property being improved;

24

1 ~~10.~~ 11. "Dietary supplements" means any product, other than
2 tobacco, intended to supplement the diet that:

- 3 a. contains one or more of the following dietary
4 ingredients:
- 5 (1) a vitamin,
 - 6 (2) a mineral,
 - 7 (3) an herb or other botanical,
 - 8 (4) an amino acid,
 - 9 (5) a dietary substance to supplement the diet by
10 increasing the total dietary intake, or
 - 11 (6) a concentrate, metabolite, constituent, extract,
12 or combination of any ingredient described in
13 divisions (1) through (5) of this subparagraph,
- 14 b. is intended for ingestion in tablet, capsule, powder,
15 softgel, gelcap, or liquid form, or, if not intended
16 for ingestion in such form, is not represented as
17 conventional food and is not represented for use as a
18 sole item of a meal or of the diet, and
- 19 c. is required to be labeled as a dietary supplement,
20 identifiable by the label and as required pursuant to
21 Section 101.36 of Title 21 of the Code of Federal
22 Regulations;

23 ~~11.~~ 12. "Drug" means a compound, substance or preparation, and
24 any component of a compound, substance or preparation:

- 1 a. recognized in the official United States ~~Pharmacopoeia~~
2 Pharmacopeia, official Homeopathic Pharmacopoeia of
3 the United States, or official National Formulary, and
4 supplement to any of them,
5 b. intended for use in the diagnosis, cure, mitigation,
6 treatment, or prevention of disease, or
7 c. intended to affect the structure or any function of
8 the body;

9 ~~12.~~ 13. "Electronic" means relating to technology having
10 electrical, digital, magnetic, wireless, optical, electromagnetic,
11 or similar capabilities;

12 ~~13.~~ 14. "Established place of business" means the location at
13 which any person regularly engages in, conducts, or operates a
14 business in a continuous manner for any length of time, that is open
15 to the public during the hours customary to such business, in which
16 a stock of merchandise for resale is maintained, and which is not
17 exempted by law from attachment, execution, or other species of
18 forced sale barring any satisfaction of any delinquent tax liability
19 accrued under the Oklahoma Sales Tax Code;

20 ~~14.~~ 15. "Fair authority" means:

- 21 a. any county, municipality, school district, public
22 trust or any other political subdivision of this
23 state, or
24

1 b. any not-for-profit corporation acting pursuant to an
2 agency, operating or management agreement which has
3 been approved or authorized by the governing body of
4 any of the entities specified in subparagraph a of
5 this paragraph which conduct, operate or produce a
6 fair commonly understood to be a county, district or
7 state fair;

8 ~~15.~~ 16. "Food and food ingredients" means substances, whether
9 in liquid, concentrated, solid, frozen, dried, or dehydrated form,
10 that are sold for ingestion or chewing by humans and are consumed
11 for their taste or nutritional value. Food and food ingredients
12 shall include bottled water, candy, and soft drinks. Food and food
13 ingredients shall not include:

- 14 a. alcoholic beverages,
- 15 b. dietary supplements,
- 16 c. marijuana, usable marijuana, or marijuana-infused
17 products,
- 18 d. prepared food, or
- 19 e. tobacco;

20 ~~16.~~ 17. "Food sold with eating utensils provided by the seller"
21 means food sold by a seller who meets the following requirements:

- 22 a. for a seller with a prepared food sales percentage of
23 greater than seventy-five percent (75%), the seller
24 makes eating utensils available to purchasers or, if a

1 food item is bottled water, candy, or soft drinks, the
2 seller gives or hands the eating utensils to
3 purchasers or makes plates, bowls, glasses, or cups
4 that are necessary for the purchaser to receive the
5 food available to purchasers. If a food item has four
6 or more servings packaged as one food item sold for a
7 single price, the seller must give or hand eating
8 utensils to the purchaser. Serving sizes must be
9 determined based on a label on an item sold, or if no
10 label is available, then a seller shall determine the
11 reasonable number of servings in an item, or
12 b. for a seller with a prepared food sales percentage of
13 seventy-five percent (75%) or less, the seller's
14 business practice is to give or hand eating utensils
15 to purchasers. Eating utensils necessary for the
16 purchaser to receive the food, such as bowls and cups,
17 need only be made available to purchasers.

18 Provided, food sold with eating utensils provided by the seller
19 does not include food items that have a utensil placed in a package
20 with the food items by a person other than the seller, and that
21 other person's NAICS classification code is that of a manufacturer,
22 subsector 311. If the packager has any other NAICS classification
23 code, the seller is considered to have provided the eating utensil;
24

1 (2) interest, financing, and carrying charges from
2 credit extended on the sale of personal property
3 or services, if the amount is separately stated
4 on the invoice, bill of sale or similar document
5 given to the purchaser, and

6 (3) any taxes legally imposed directly on the
7 consumer that are separately stated on the
8 invoice, bill of sale or similar document given
9 to the purchaser.

10 c. Such term shall include consideration received by the
11 seller from third parties if:

12 (1) the seller actually receives consideration from a
13 party other than the purchaser and the
14 consideration is directly related to a price
15 reduction or discount on the sale,

16 (2) the seller has an obligation to pass the price
17 reduction or discount through to the purchaser,

18 (3) the amount of the consideration attributable to
19 the sale is fixed and determinable by the seller
20 at the time of the sale of the item to the
21 purchaser, and

22 (4) one of the following criteria is met:

23 (a) the purchaser presents a coupon, certificate
24 or other documentation to the seller to

1 claim a price reduction or discount where
2 the coupon, certificate or documentation is
3 authorized, distributed or granted by a
4 third party with the understanding that the
5 third party will reimburse any seller to
6 whom the coupon, certificate or
7 documentation is presented,

8 (b) the purchaser identifies himself or herself
9 to the seller as a member of a group or
10 organization entitled to a price reduction
11 or discount; provided, a "preferred
12 customer" card that is available to any
13 patron does not constitute membership in
14 such a group, or

15 (c) the price reduction or discount is
16 identified as a third-party price reduction
17 or discount on the invoice received by the
18 purchaser or on a coupon, certificate or
19 other documentation presented by the
20 purchaser;

21 ~~17.~~ 19. a. "Maintaining a place of business in this state"
22 means and shall be presumed to include:

23 (1) (a) utilizing or maintaining in this state,
24 directly or by subsidiary, an office,

1 distribution house, sales house, warehouse,
2 or other physical place of business, whether
3 owned or operated by the vendor or any other
4 person, other than a common carrier acting
5 in its capacity as such, or

6 (b) having agents operating in this state,
7 whether the place of business or agent is
8 within this state temporarily or permanently
9 or whether the person or agent is authorized
10 to do business within this state, and

11 (2) the presence of any person, other than a common
12 carrier acting in its capacity as such, that has
13 substantial nexus in this state and that:

14 (a) sells a similar line of products as the
15 vendor and does so under the same or a
16 similar business name,

17 (b) uses trademarks, service marks or trade
18 names in this state that are the same or
19 substantially similar to those used by the
20 vendor,

21 (c) delivers, installs, assembles or performs
22 maintenance services for the vendor,

23 (d) facilitates the vendor's delivery of
24 property to customers in the state by

1 allowing the vendor's customers to pick up
2 property sold by the vendor at an office,
3 distribution facility, warehouse, storage
4 place or similar place of business

5 maintained by the person in this state, or

6 (e) conducts any other activities in this state
7 that are significantly associated with the
8 vendor's ability to establish and maintain a
9 market in this state for the vendor's sale.

10 b. The presumptions in divisions (1) and (2) of
11 subparagraph a of this paragraph may be rebutted by
12 demonstrating that the person's activities in this
13 state are not significantly associated with the
14 vendor's ability to establish and maintain a market in
15 this state for the vendor's sales.

16 c. Any ruling, agreement or contract, whether written or
17 oral, express or implied, between a person and
18 executive branch of this state, or any other state
19 agency or department, stating, agreeing or ruling that
20 the person is not ~~"maintaining a place of business in
21 this state"~~ maintaining a place of business in this
22 state or is not required to collect sales and use tax
23 in this state despite the presence of a warehouse,
24 distribution center or fulfillment center in this

1 state that is owned or operated by the vendor or an
2 affiliated person of the vendor shall be null and void
3 unless it is specifically approved by a majority vote
4 of each house of the ~~Oklahoma~~ Legislature;

5 ~~18.~~ 20. "Manufacturing" means and includes the activity of
6 converting or conditioning tangible personal property by changing
7 the form, composition, or quality of character of some existing
8 material or materials, including natural resources, by procedures
9 commonly regarded by the average person as manufacturing,
10 compounding, processing or assembling, into a material or materials
11 with a different form or use. ~~"Manufacturing"~~ Manufacturing does
12 not include extractive industrial activities such as mining,
13 quarrying, logging, and drilling for oil, gas and water, nor oil and
14 gas field processes, such as natural pressure reduction, mechanical
15 separation, heating, cooling, dehydration and compression;

16 ~~19.~~ 21. "Manufacturing operation" means the designing,
17 manufacturing, compounding, processing, assembling, warehousing, or
18 preparing of articles for sale as tangible personal property. A
19 manufacturing operation begins at the point where the materials
20 enter the manufacturing site and ends at the point where a finished
21 product leaves the manufacturing site. ~~"Manufacturing operation"~~
22 Manufacturing operation does not include administration, sales,
23 distribution, transportation, site construction, or site
24 maintenance. Extractive activities and field processes shall not be

1 deemed to be a part of a manufacturing operation even when performed
2 by a person otherwise engaged in manufacturing;

3 ~~20.~~ 22. "Manufacturing site" means a location where a
4 manufacturing operation is conducted, including a location
5 consisting of one or more buildings or structures in an area owned,
6 leased, or controlled by a manufacturer;

7 ~~21.~~ 23. "Over-the-counter drug" means a drug that contains a
8 label that identifies the product as a drug as required by 21
9 C.F.R., Section 201.66. The over-the-counter-drug label includes:

- 10 a. a "Drug Facts" panel, or
11 b. a statement of the "active ingredient(s)" with a list
12 of those ingredients contained in the compound,
13 substance or preparation;

14 ~~22.~~ 24. "Person" means any individual, company, partnership,
15 joint venture, joint agreement, association, mutual or otherwise,
16 limited liability company, corporation, estate, trust, business
17 trust, receiver or trustee appointed by any state or federal court
18 or otherwise, syndicate, this state, any county, city, municipality,
19 school district, any other political subdivision of the state, or
20 any group or combination acting as a unit, in the plural or singular
21 number;

22 ~~23.~~ 25. "Prepared food" means:

- 23 a. food sold in a heated state or that is heated by the
24 seller,

- 1 b. two or more food ingredients mixed or combined by the
2 seller for sale as a single item, or
- 3 c. food sold with eating utensils provided by the seller,
4 including plates, knives, forks, spoons, glasses,
5 cups, napkins, or straws, but does not include a
6 container or packaging used to transport the food, and
- 7 d. prepared food shall not include:
- 8 (1) food sold by a seller whose primary North
9 American Industry Classification System (NAICS)
10 classification is manufacturing in Sector 311,
11 except subsector 3118,
- 12 (2) food sold in an unheated state by weight or
13 volume as a single item,
- 14 (3) bakery items including bread rolls, buns,
15 biscuits, bagels, croissants, pastries, donuts,
16 Danish, cakes, tortes, pies, tarts, muffins,
17 bars, cookies, and tortillas, and
- 18 (4) food sold that ordinarily requires additional
19 cooking, not including just reheating, by the
20 consumer prior to consumption;

21 ~~24.~~ 26. "Prescription" means an order, formula or recipe issued
22 in any form of oral, written, electronic, or other means of
23 transmission by a duly licensed "practitioner" as defined in Section
24 1357.6 of this title;

1 ~~25.~~ 27. "Prewritten computer software" means ~~"computer~~
2 ~~software"~~ computer software, including prewritten upgrades, which is
3 not designed and developed by the author or other creator to the
4 specifications of a specific purchaser. The combining of two or
5 more prewritten computer software programs or prewritten portions
6 thereof does not cause the combination to be other than prewritten
7 computer software. Prewritten software includes software designed
8 and developed by the author or other creator to the specifications
9 of a specific purchaser when it is sold to a person other than the
10 purchaser. Where a person modifies or enhances computer software of
11 which the person is not the author or creator, the person shall be
12 deemed to be the author or creator only of such person's
13 modifications or enhancements. Prewritten software or a prewritten
14 portion thereof that is modified or enhanced to any degree, where
15 such modification or enhancement is designed and developed to the
16 specifications of a specific purchaser, remains prewritten software;
17 provided, however, that where there is a reasonable, separately
18 stated charge or an invoice or other statement of the price given to
19 the purchaser for such modification or enhancement, such
20 modification or enhancement shall not constitute prewritten computer
21 software;

22 ~~26.~~ 28. "Repairman" means any person who performs any repair
23 service upon tangible personal property of the consumer, whether or
24 not the repairman, as a necessary and incidental part of performing

1 the service, incorporates tangible personal property belonging to or
2 purchased by the repairman into the tangible personal property being
3 repaired;

4 ~~27.~~ 29. "Sale" means the transfer of either title or possession
5 of tangible personal property for a valuable consideration
6 regardless of the manner, method, instrumentality, or device by
7 which the transfer is accomplished in this state, or other
8 transactions as provided by this paragraph, including but not
9 limited to:

- 10 a. the exchange, barter, lease, or rental of tangible
11 personal property resulting in the transfer of the
12 title to or possession of the property,
- 13 b. the disposition for consumption or use in any business
14 or by any person of all goods, wares, merchandise, or
15 property which has been purchased for resale,
16 manufacturing, or further processing,
- 17 c. the sale, gift, exchange, or other disposition of
18 admission, dues, or fees to clubs, places of
19 amusement, or recreational or athletic events or for
20 the privilege of having access to or the use of
21 amusement, recreational, athletic or entertainment
22 facilities,
- 23 d. the furnishing or rendering of services taxable under
24 the Oklahoma Sales Tax Code, and

1 e. any use of motor fuel or diesel fuel by a supplier, as
2 defined in Section 500.3 of this title, upon which
3 sales tax has not previously been paid, for purposes
4 other than to propel motor vehicles over the public
5 highways of this state. Motor fuel or diesel fuel
6 purchased outside the state and used for purposes
7 other than to propel motor vehicles over the public
8 highways of this state shall not constitute a sale
9 within the meaning of this paragraph;

10 ~~28.~~ 30. "Sale for resale" means:

11 a. a sale of tangible personal property to any purchaser
12 who is purchasing tangible personal property for the
13 purpose of reselling it within the geographical limits
14 of the United States of America or its territories or
15 possessions, in the normal course of business either
16 in the form or condition in which it is purchased or
17 as an attachment to or integral part of other tangible
18 personal property,

19 b. a sale of tangible personal property to a purchaser
20 for the sole purpose of the renting or leasing, within
21 the geographical limits of the United States of
22 America or its territories or possessions, of the
23 tangible personal property to another person by the
24

1 purchaser, but not if incidental to the renting or
2 leasing of real estate,

3 c. a sale of tangible goods and products within this
4 state if, simultaneously with the sale, the vendor
5 issues an export bill of lading, or other
6 documentation that the point of delivery of such goods
7 for use and consumption is in a foreign country and
8 not within the territorial confines of the United
9 States. If the vendor is not in the business of
10 shipping the tangible goods and products that are
11 purchased from the vendor, the buyer or purchaser of
12 the tangible goods and products is responsible for
13 providing an export bill of lading or other
14 documentation to the vendor from whom the tangible
15 goods and products were purchased showing that the
16 point of delivery of such goods for use and
17 consumption is a foreign country and not within the
18 territorial confines of the United States, or

19 d. a ~~sales~~ sale of any carrier access services, right of
20 access services, telecommunications services to be
21 resold, or telecommunications used in the subsequent
22 provision of, use as a component part of, or
23 integrated into, end-to-end telecommunications
24 service;

1 ~~29.~~ 31. "Soft drinks" means any nonalcoholic beverages that
2 contain natural or artificial sweeteners. Soft drinks shall not
3 include beverages that contain:

- 4 a. milk or milk products,
- 5 b. soy, rice, oat, or similar milk substitutes, or
- 6 c. greater than fifty percent (50%) of vegetable or fruit
7 juice by volume;

8 ~~30.~~ 32. "Tangible personal property" means personal property
9 that can be seen, weighed, measured, felt, or touched or that is in
10 any other manner perceptible to the senses. ~~"Tangible personal~~
11 ~~property"~~ Tangible personal property includes electricity, water,
12 gas, steam and prewritten computer software. This definition shall
13 be applicable only for purposes of the Oklahoma Sales Tax Code;

14 ~~31.~~ 33. "Taxpayer" means any person liable to pay a tax imposed
15 by the Oklahoma Sales Tax Code;

16 ~~32.~~ 34. "Tax period" or "taxable period" means the calendar
17 period or the taxpayer's fiscal period for which a taxpayer has
18 obtained a permit from the Tax Commission to use a fiscal period in
19 lieu of a calendar period;

20 ~~33.~~ 35. "Tax remitter" means any person required to collect,
21 report, or remit the tax imposed by the Oklahoma Sales Tax Code. A
22 tax remitter who fails, for any reason, to collect, report, or remit
23 the tax shall be considered a taxpayer for purposes of assessment,
24

1 collection, and enforcement of the tax imposed by the Oklahoma Sales
2 Tax Code; and

3 ~~34.~~ 36. "Vendor" means:

4 a. any person making sales of tangible personal property
5 or services in this state, the gross receipts or gross
6 proceeds from which are taxed by the Oklahoma Sales
7 Tax Code,

8 b. any person maintaining a place of business in this
9 state and making sales of tangible personal property
10 or services, whether at the place of business or
11 elsewhere, to persons within this state, the gross
12 receipts or gross proceeds from which are taxed by the
13 Oklahoma Sales Tax Code,

14 c. any person who solicits business by employees,
15 independent contractors, agents, or other
16 representatives in this state, and thereby makes sales
17 to persons within this state of tangible personal
18 property or services, the gross receipts or gross
19 proceeds from which are taxed by the Oklahoma Sales
20 Tax Code, or

21 d. any person, pursuant to an agreement with the person
22 with an ownership interest in or title to tangible
23 personal property, who has been entrusted with the
24 possession of any such property and has the power to

1 designate who is to obtain title, to physically
2 transfer possession of, or otherwise make sales of the
3 property.

4 COMMITTEE REPORT BY: COMMITTEE ON FINANCE
5 February 26, 2024 - DO PASS AS AMENDED BY CS
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