

STORAGE NAME: h3899s1.ft

DATE: April 1, 1998

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3899

RELATING TO: Intangible Personal Property Taxes

SPONSOR(S): Committee on Financial Services, Committee on Finance and Taxation, and Representative Starks and others

COMPANION BILL(S): Similar SB 1450; Compare HB 63, HB 1511, HB 3091, HB 3425, SB 320, SB 520, SB 634, SB 906, SB 1090, SB 1654

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCE AND TAXATION YEAS 12 NAYS 2
- (2) FINANCIAL SERVICES YEAS 7 NAYS 2
- (3) FINANCE AND TAXATION
- (4) GOVERNMENTAL OPERATIONS
- (5)

I. SUMMARY:

HB 3899 makes numerous changes to the intangible tax. The bill would raise the minimum amount of tax due before a return and payment are required from \$5 to \$60 dollars. An exemption for accounts receivable would be phased in over a three year period beginning January 1, 1999. A bank or savings association that acts as a trustee, would not be required to file a return or pay intangible tax on assets held by the trust. Additionally, if the bank or savings association acts as a fiduciary or agent of a trust other than as a trustee, then the taxable intangible personal property in the trust would not have a taxable situs in the state solely by virtue of the management or control of the bank or savings association. If an investment adviser does not own, but has discretionary authority to invest moneys on behalf of a principal, then the investment adviser would not be required to file a return and pay tax on the intangible personal property with respect to the assets the adviser purchases with the principal's funds. If an investment adviser acts as a fiduciary or an agent of a principal, then the intangible personal property of the principal would not have a taxable situs in Florida solely by virtue of the management or control of that property by the investment adviser.

Banks, savings associations and insurers would be exempted from the intangible tax. The credits for intangible tax paid which are given to banks, savings associations, and insurers would be repealed. Penalties for late filing, and late payment would be capped at a combined total of no more than 10 percent per month and no more than 50 percent of the total tax due. The penalty for under reporting and undervaluation would be reduced from 30 percent to 10 percent.

Counties would receive 35.7 percent of the intangible personal property taxes collected. The remaining 64.3 percent would be transferred to the General Revenue Fund.

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In FY 1998-99, CS/HB 3899 would negatively impact state General Revenue receipts by (\$81.0) million and the Revenue Sharing Trust Fund for Counties by (\$16.4) million.¹

¹ The Revenue Estimating Conference found the impact of the exemption for interests in real estate mortgage securitizations, the exemption for affiliate or subsidiary of a bank and the exemption for the Roth and education IRAs to be indeterminate at this time.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Florida's intangible tax, enacted in 1931, is a tax on "all personal property which is not in itself intrinsically valuable, but which derives its chief value from that which it represents." §199.023, F.S. Taxable intangible personal property includes, among other things, stocks, bonds, notes, other obligations to pay money, and accounts receivable. §199.023, F.S. The term "accounts receivable" is not defined by statute. Florida Administrative Code Rule 12C-2.002(1)(a) defines accounts receivable as "a debt which is owed by another which is not supported by a negotiable paper." Intangible personal property exempt from the tax includes money, franchises, general partnership interests and retirement accounts. §199.185, F.S. The intangible tax has two parts: the annual and the nonrecurring. Only the annual tax, which is the subject of this bill, will be discussed.

The intangible tax is paid annually and is based on the value of assets as of January 1. §199.103, F.S. The return is due by June 30 with discounts for early payment. §199.042, F.S. The tax is paid by all "persons" (natural and non-natural), which include any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, personal representative, receiver, or other fiduciary, unless such persons are exempted from the tax. §199.03(3), F.S. The tax must be paid by all corporations that own, control, or manage intangible personal property which has a taxable situs within the state. §199.052(1), F.S. The terms "control" or "manage" do not include any ministerial function or any processing activity. §199.052(1), F.S. The terms "ministerial function" and "processing activity" are not defined by statute.

A Florida domiciled trustee is required to pay intangible tax on the assets held in trust since the trustee has management and control of the assets. Florida domiciled beneficiaries also must pay the intangible tax if they own a taxable beneficial interest in a trust. If the trustee has filed a return and paid the tax, the beneficiary is not required to file a return. §199.052(5), F.S. If an investment adviser has management or control over assets the adviser does not own, the assets held in Florida are subject to intangible tax.

The tax rate is capped at 2 mills by Article VII, section 2 of the Florida Constitution. The current tax rate is 2 mills (\$2 per \$1,000 of value). §199.032, F.S. Banks and savings associations are exempt from .5 mill; therefore, they are taxed at a rate of 1.5 mills. §199.185(5), F.S. With respect to the first mill of the annual tax, every natural person is entitled each year to an exemption of the first \$20,000 of the value of property otherwise subject to said tax. A husband and wife filing jointly enjoy an exemption of \$40,000. With respect to the second mill of the annual tax, every natural person is entitled each year to an exemption of the first \$100,000 of the value of property otherwise subject to said tax. A husband and wife filing jointly will have an exemption of \$200,000. §199.185(2), F.S. For example, an individual who owns under \$100,000 of intangible personal property would enjoy an exemption of \$20,000. An individual who owns over \$100,000 of intangible personal property would enjoy an exemption of \$100,000. If a husband and wife own up to \$100,000 intangible personal property, they would have an exemption of \$40,000. A husband and wife who own over \$200,000 worth of intangible personal property would be exempt from taxation on the first \$200,000. "Non-natural" persons, such as corporations, do not receive these exemptions.

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As the result of legislation passed during the 1997 session, real estate mortgage investment conduits (REMICs) held as investments by a bank or saving association are exempt from intangible personal property taxes.

Banks, savings associations, and insurance companies receive credits for the intangible taxes they pay. Any bank or savings association, as defined in s. 220.62, F.S., is entitled to a credit against the intangible tax in an amount equal to 33 percent of the tax paid in the immediately preceding taxable year less the credit allowed by s. 220.68, F.S., (corporate income tax) for such bank or savings association for such year. §199.104, F.S. Banks and savings associations are also given a credit against their corporate income tax equal to the lesser of 100% of intangibles tax paid or 65% of corporate tax liability. §220.68, F.S. For example, if company A owes \$100 in corporate income tax and has paid \$65 in intangible tax, company A will only owe \$35 in corporate income tax. Insurance companies are given a credit against their insurance premium tax for intangible tax paid. §624.509(4), F.S.

If any individual or entity owes less than \$5 in tax, no tax and no return are due. §199.052(4), F.S. An individual would owe taxes if he owns more than \$25,000 in intangible personal property. A married couple filing jointly would owe taxes if they own more than \$45,000 of intangible personal property. Corporations must file an annual informational return even if they have no intangible tax liability. §199.062, F.S.

If the intangible tax is not paid by the due date, the delinquency penalty is 10 percent of the delinquent tax for each calendar month or portion thereof from the due date until paid, up to a limit of 50 percent of the total tax not timely paid. If the tax return required is not filed by the due date, a penalty of 30 percent of the tax due with the return is charged for each year or portion of the year during which the return remains unfiled. §199.282, F.S. These penalties are additive. If a tax return is filed and property is either omitted or undervalued, then a specific penalty shall be charged of 30 percent of the tax attributable to each omitted item or to each undervaluation. No delinquency or late filing penalty shall be charged with respect to any undervaluation. §199.282, F.S.

Revenues from the intangible tax are shared between the state and the counties. After administrative expenses, the counties receive 33.5 percent and the state receives 66.5 percent of the revenues. §199.292(3), F.S.

According to the Department of Revenue for 1995-1996, there were 288,648 individual filers representing \$159.9 million in taxes due and 299,711 joint filers representing \$245.1 million in taxes due, for a total of \$405 million. This represents 45 percent of total collections for 1995-1996. Total collections for fiscal year 1995-1996, were \$895.9 million.

According to Florida TaxWatch, only four other states impose a tax on intangible personal property. These include Kentucky, Michigan, Pennsylvania, and West Virginia. The Supreme Court of Kentucky recently found parts of that state's intangibles tax unconstitutional. The state of West Virginia has begun a five year phase out of the individual intangible tax by decreasing the taxable value.

B. EFFECT OF PROPOSED CHANGES:

HB 3899 makes numerous changes to the intangible personal property tax.

- The minimum amount of tax due from a taxpayer would rise from \$5 to \$60. The Department of Revenue estimates that over 250,000 fewer taxpayers, both businesses and individuals, would have to pay intangible tax as a result of this change. In effect, an individual who on January 1 owned less than \$80,000 in taxable assets would not have to pay intangible tax or file a return, up from \$25,000. A couple filing jointly would not have to pay intangible tax or file a return if they owned less than \$100,000 in taxable assets, up from \$45,000. A business or other “non-natural person” would not have to pay the tax, and in certain cases file a return, if it owned, managed, or controlled less than \$30,000 in taxable assets.
- A bank or savings association, as defined in §220.62, that acts as a trustee would not have to file a return or pay intangible tax on assets held by the trust. Additionally, if such a bank or savings association acts as a fiduciary or agent of a trust other than as a trustee, the taxable intangible personal property in the trust would be deemed not to have a taxable situs in the state solely by virtue of the management or control of the bank or savings association. Where a bank or savings association acts as a trustee, the trust would not be considered a Florida-situs trust. Each Florida resident with a beneficial interest in the trust would be responsible for returning the resident’s equitable share of the trust’s intangible personal property and paying the annual tax on it.
- An investment adviser who does not own, but has discretionary authority to invest moneys on behalf of a principal, would not be required to file a return and pay tax on the intangible personal property with respect to the assets the adviser purchases with such funds of the principal. If an investment adviser acts as a fiduciary or an agent of a principal, the intangible personal property of the principal would not have a taxable situs in Florida solely by virtue of the management or control of that property by the investment adviser.
- Intangible personal property held in certain individual retirement accounts, including the Roth and education IRAs, would be exempt from intangible personal property taxes.
- Accounts receivable would be exempt from the intangible tax. The exemption would be phased in over a three year period beginning January 1, 1999. “Accounts receivable” would be defined as “a business debt which is owed by another in the taxpayer’s ordinary course of trade or business and is not supported by negotiable instruments.” Accounts receivable include, but are not limited to, credit card receivables, charge card receivables, credit receivables, margin receivables, inventory or other floor plan financing, lease payments past due, conditional sales contract, and financing lease contracts. The exemption would not apply to accounts receivable which arise outside the taxpayer’s ordinary course of trade or business. This exclusion would not apply to a person who was in the business of buying and selling intangible assets where the receivable arose in the ordinary course of business.

- Interests in real estate mortgage securitizations, including real estate mortgage conduits (REMICs) and financial asset securitization trusts (FASITs), would be exempt from intangible personal property taxes, not just those held by banks.
- Banks and savings associations, as defined in §624.03, F.S., would be exempt from the intangible tax. Sections 199.104 and 220.68, F.S., which provided credits against the corporate income tax would be repealed. Banks and savings associations would not pay intangible tax for taxes due on or after July 1, 1999. Effective July 1, 2000, the credits under §199.104, F.S., or §220.68, F.S., would be repealed.
- Insurers, as defined in §624.03, F.S., would be exempt from the intangible tax. Insurers would not pay intangible tax after July 1, 1999. An insurer would no longer receive a credit for intangible tax paid against the amount of premium tax paid starting on July 1, 2000.
- The penalty for late payment, late filing, and under reporting and undervaluation would be reduced. The penalties for late payment and late filing would be limited to a total of 10% per month and 50% of the total tax due. The penalty for under reporting and undervaluation would be reduced from 30% to 10%.
- When a taxpayer voluntarily self-discloses a tax liability and enters into an agreement for payment of taxes, the maximum period that the taxpayer would be liable for any tax is three years.
- “Ministerial function,” “processing activity,” and “investment adviser” would be defined in s. 199.023, F.S.
- The percentage share of revenues from the intangible tax shared with the counties would rise from 33.5 percent to 35.7 percent. The remaining 64.3 percent would be transferred to the General Revenue Fund. This would take effect on January 1, 1999.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

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- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

- (3) any entitlement to a government service or benefit?

N/A

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

Yes. Natural persons would not have to file a tax return or pay tax if they owe less than \$60. Banks, savings associations, and insurers would be exempt from paying the tax.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends ss. 199.023; 199.052; 199.175; 199.185; 199.282; 199.292; 220.02; and 624.509, F.S. Creates s. 199.233, F.S. Repeals ss. 199.104 and 220.68, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1 creates subsections (13), (14) and (15) of §199.023, F.S., to define “ministerial function,” “processing activity,” and “investment adviser.”

Section 2 amends §199.052, F.S. Subsection 2 is amended to increase the amount of tax owed before payment and a return are due to \$60. A new subsection (15) is created to exempt a bank or savings association that acts as a trustee of a trust from paying intangible tax on property held by that trust. A beneficiary of a trust who lives in Florida would be responsible for taxes on the intangible personal property held in the trust. Additionally, if a bank or savings association that acts as a fiduciary or agent of a trust other than the trustee, the personal property of the trust would not be considered to have a taxable situs in the state simply because the managing bank or savings association may be located in Florida.

Subsection (16) is created to exempt an investment adviser who does not own but has authority to invest moneys on behalf of a principal from filing a return and paying tax on the intangible personal property with respect to the assets the adviser purchases with the principal's funds. If an investment adviser acts as a fiduciary or an agent of a principal, intangible personal property of the principal shall not have a taxable situs in this state simply because the investment adviser who manages the funds is located in the state.

Section 3 removes language in §199.052(2) and (11) which would no longer be needed due to the repeal of the intangible tax on banks and savings associations. This section would be effective July 1, 2000.

Section 4 amends §199.175(1)(a), F.S., to remove language no longer needed due to the repeal of the intangible tax on banks or financial institutions. Section 199.175(2)(b), F.S., is amended to remove language no longer needed due to the repeal of the intangible tax on insurers.

Section 5 amends s. 199.185(1)(e), F.S., exempt education and Roth IRAs from the intangible personal property tax. This change would take effect July 1, 1998.

Section 199.185(1)(k), F.S., is amended to exempt real estate mortgage securitizations, including real estate mortgage conduits (REMICs) and financial asset securitization trusts (FASITs), from the intangible personal property tax, not just those held by banks. This change would take effect July 1, 1998.

Section 199.185(1)(i), F.S., is created to exempt accounts receivable from the intangible tax. One-third of the accounts receivable would be exempt on January 1, 1999; two-thirds would be exempt on January 1, 2000; and all would be exempt on January 1, 2001. "Accounts receivable" would be defined as "a business debt which is owed by another in the taxpayer's ordinary course of trade or business and is not supported by negotiable instruments." The exemption does not apply to accounts receivable which arise outside the taxpayer's ordinary course of trade or business.

Section 199.185(5), F.S., is amended to exempt banking organizations, as defined in s. 200.62(1), (2), (3) or (4), from the intangible personal property tax. This change would be effective for taxes due on or after July 1, 1999.

Section 199.185(8), F.S., is created to exempt insurers, as defined in s. 624.09, F.S., from the intangible personal property taxes due on or after July 1, 1999.

Section 6 repeals s.199.104, F.S., which addresses the credits that banks and savings associations receive against the intangible tax. Section 220.68, F.S., which deals with credits against corporate income tax would also be repealed. This would be effective for tax years beginning after December 31, 1999.

Section 7 creates s. 199.233, F.S., to provide that when a taxpayer voluntarily self-discloses a tax liability and enters into an agreement for payment of taxes, the maximum period that the taxpayer would be liable for any tax is three years. This would take effect on January 1, 1999.

Section 8 amends §199.282(3), F.S., to limit the combined total of the penalties under paragraphs (a) and (b) to 10 percent per month and 50 percent of the total tax due. Subsection (4) is amended to reduce the penalty for omitted or undervalued property from 30 percent to 10 percent of the tax due to the omitted or undervalued property. This section would take effect on July 1, 1998.

Section 9 amends §199.292(3), F.S., is amended to change the percentage of intangible tax revenue that is distributed into the Revenue Sharing Trust Fund for Counties from 33.5 percent to 35.7 percent. The General Revenue Fund would receive the remaining 64.3 percent. This would be effective January 1, 1999.

Section 10 amends §220.02, F.S., to remove language no longer needed due to the repeal of the intangible tax on banks and savings associations. This section would be effective July 1, 2000.

Section 11 amends §624.509, F.S., to remove language referencing the intangible tax. This section would be effective July 1, 2000.

Section 12 states that for tax years beginning on or after December 31, 1999, no credit for intangible tax paid shall be available for insurance premium taxes paid under s. 624.509(4), F.S.

Section 13 states: Except as other provided herein, this act shall take effect on July 1 of the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

According to the Revenue Estimating Conference, the fiscal impact of CS/HB 3899 is as follows:²

1. Non-recurring Effects:

In CS/HB 3899, some recurring and non-recurring effects overlap, therefore it is difficult to separate out the non-recurring effects.

2. Recurring Effects:

	<u>FY 98-99</u>	<u>FY 99-00</u>	<u>FY 00-01</u>
General Revenue	(\$81.0M)	(\$152M)	(\$182.1M)

²The Revenue Estimating Conference found the impact of the exemption for interests in real estate mortgage securitizations, the exemption for affiliate or subsidiary of a bank and the exemption for the Roth and education IRAs to be indeterminate at this time.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

Total for FY 98-99 is (\$81.0M). The total for FY 99-00 is (\$152M).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

According to the Revenue Estimating Conference, the fiscal impact of CS/HB 3899 is as follows:³

1. Non-recurring Effects:

In CS/HB 3899, some recurring and non-recurring effects overlap, therefore it is difficult to separate out the non-recurring effects.

2. Recurring Effects:

	<u>FY 98-99</u>	<u>FY 99-00</u>	<u>FY 00-01</u>
Revenue Sharing Trust			
Fund for Counties	(\$16.4M)	(\$49.1M)	(\$63.8M)

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

The bill raises the minimum amount of tax due before a return and payment are required from \$5 to \$60 dollars. The Department of Revenue estimates that over 250,000 fewer taxpayers, both businesses and individuals, would have to pay intangible tax as a result of this change. An individual who owned on January 1 less than \$80,000 in taxable assets would not have to pay intangible tax or file a return. For a couple filing jointly, they would not have to pay intangible tax or file a return if

³ The Revenue Estimating Conference found the impact of the exemption for interests in real estate mortgage securitizations, the exemption for affiliate or subsidiary of a bank and the exemption for the Roth and education IRAs to be indeterminate at this time.

they owned less than \$100,000 in taxable assets. A business or other "non-natural person" would not have to pay the tax, and in certain cases file a return, if it owned, manage, or controlled less than \$30,000 in taxable assets.

Banks, savings associations, and insurers would no longer have to pay intangible tax. Even though these entities received an offsetting tax credit against corporate income tax or insurance premium tax, these taxpayers will be saved accounting and other related costs by no longer having to pay the intangible tax.

Both businesses and individuals will have lower taxes due to the exemption of accounts receivable from intangible tax.

A bank or savings association that acts as a trustee, shall not be required to file a return or pay intangible tax on assets held by the trust. Additionally, if such a bank or savings association, acts as a fiduciary or agent of a trust other than as a trustee, the taxable intangible personal property in the trust shall not have a taxable situs in the state solely by virtue of the management or control of the bank or savings association. Trust departments of banks and savings associations will be more likely to attract out of state customers who would place their money in Florida based trusts, since the trust assets will no longer be subject to Florida's intangible tax.

3. Effects on Competition, Private Enterprise and Employment Markets:

The Florida TaxWatch established a Florida Intangible Tax Task Force to examine the impact Florida's intangible tax has on the economic development and competitive position of Florida. The task force met during the winter of 1997-98 and concluded that certain aspects of the intangible personal property tax deterred economic growth in Florida.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of municipalities and counties to raise revenues.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

The bill will not reduce the amount of the intangible tax shared with municipalities and counties.

V. **COMMENTS:**

N/A

VI. **AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

The committee substitute to HB 3899 made the following changes:

- added the definition of "investment adviser" to s. 199.023, F.S.;
- changed the effective date of the exemption of banks, savings associations, and insurance companies from the definition of "any person domiciled in the state;"
- exempted interests in real estate mortgage securitization from the intangible personal property tax;
- includes Roth and education IRAs in property exempt from intangible personal property tax;
- provided that when a taxpayer voluntarily self-discloses a tax liability and enters into an agreement for payment of taxes, the maximum period that the taxpayer would be liable for any tax is three years;
- reduced the amount of collected tax going to the Revenue Sharing Trust Fund for Counties from a high of 42.4 percent to 35.7 percent; and
- changed the effective date to December 31, 1999 when credits for intangible tax paid would no longer be available against the premium tax.

VII. **SIGNATURES:**

COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

Legislative Research Director:

Lynne Overton

Keith G. Baker, Ph.D.

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