

SECOND REGULAR SESSION

HOUSE BILL NO. 1966

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ZERR.

4936H.021

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 144.030, RSMo, and to enact in lieu thereof one new section relating to sales tax on internet access.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 144.030, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 144.030, to read as follows:

144.030. 1. There is hereby specifically exempted from the provisions of sections 144.010 to 144.525 and from the computation of the tax levied, assessed or payable pursuant to sections 144.010 to 144.525 such retail sales as may be made in commerce between this state and any other state of the United States, or between this state and any foreign country, and any retail sale which the state of Missouri is prohibited from taxing pursuant to the Constitution or laws of the United States of America, and such retail sales of tangible personal property which the general assembly of the state of Missouri is prohibited from taxing or further taxing by the constitution of this state.

2. There are also specifically exempted from the provisions of the local sales tax law as defined in section 32.085, section 238.235, and sections 144.010 to 144.525 and 144.600 to 144.761 and from the computation of the tax levied, assessed or payable pursuant to the local sales tax law as defined in section 32.085, section 238.235, and sections 144.010 to 144.525 and 144.600 to 144.745:

(1) Motor fuel or special fuel subject to an excise tax of this state, unless all or part of such excise tax is refunded pursuant to section 142.824; or upon the sale at retail of fuel to be consumed in manufacturing or creating gas, power, steam, electrical current or in furnishing water to be sold ultimately at retail; or feed for livestock or poultry; or grain to be converted into

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 foodstuffs which are to be sold ultimately in processed form at retail; or seed, limestone or
19 fertilizer which is to be used for seeding, liming or fertilizing crops which when harvested will
20 be sold at retail or will be fed to livestock or poultry to be sold ultimately in processed form at
21 retail; economic poisons registered [pursuant to the provisions of] **under sections 281.210 to**
22 **281.310**, the Missouri pesticide registration [law (sections 281.220 to 281.310)] **act**, which are
23 to be used in connection with the growth or production of crops, fruit trees or orchards applied
24 before, during, or after planting, the crop of which when harvested will be sold at retail or will
25 be converted into foodstuffs which are to be sold ultimately in processed form at retail;

26 (2) Materials, manufactured goods, machinery and parts which when used in
27 manufacturing, processing, compounding, mining, producing or fabricating become a component
28 part or ingredient of the new personal property resulting from such manufacturing, processing,
29 compounding, mining, producing or fabricating and which new personal property is intended to
30 be sold ultimately for final use or consumption; and materials, including without limitation,
31 gases and manufactured goods, including without limitation slagging materials and firebrick,
32 which are ultimately consumed in the manufacturing process by blending, reacting or interacting
33 with or by becoming, in whole or in part, component parts or ingredients of steel products
34 intended to be sold ultimately for final use or consumption;

35 (3) Materials, replacement parts and equipment purchased for use directly upon, and for
36 the repair and maintenance or manufacture of, motor vehicles, watercraft, railroad rolling stock
37 or aircraft engaged as common carriers of persons or property;

38 (4) Motor vehicles registered in excess of fifty-four thousand pounds, and the trailers
39 pulled by such motor vehicles, that are actually used in the normal course of business to haul
40 property on the public highways of the state, and that are capable of hauling loads commensurate
41 with the motor vehicle's registered weight; and the materials, replacement parts, and equipment
42 purchased for use directly upon, and for the repair and maintenance or manufacture of such
43 vehicles. For purposes of this subdivision, "motor vehicle" and "public highway" shall have the
44 meaning as ascribed in section 390.020;

45 (5) Replacement machinery, equipment, and parts and the materials and supplies solely
46 required for the installation or construction of such replacement machinery, equipment, and
47 parts, used directly in manufacturing, mining, fabricating or producing a product which is
48 intended to be sold ultimately for final use or consumption; and machinery and equipment, and
49 the materials and supplies required solely for the operation, installation or construction of such
50 machinery and equipment, purchased and used to establish new, or to replace or expand existing,
51 material recovery processing plants in this state. For the purposes of this subdivision, a "material
52 recovery processing plant" means a facility that has as its primary purpose the recovery of
53 materials into a usable product or a different form which is used in producing a new product and

54 shall include a facility or equipment which are used exclusively for the collection of recovered
55 materials for delivery to a material recovery processing plant but shall not include motor vehicles
56 used on highways. For purposes of this section, the terms motor vehicle and highway shall have
57 the same meaning pursuant to section 301.010. Material recovery is not the reuse of materials
58 within a manufacturing process or the use of a product previously recovered. The material
59 recovery processing plant shall qualify under the provisions of this section regardless of
60 ownership of the material being recovered;

61 (6) Machinery and equipment, and parts and the materials and supplies solely required
62 for the installation or construction of such machinery and equipment, purchased and used to
63 establish new or to expand existing manufacturing, mining or fabricating plants in the state if
64 such machinery and equipment is used directly in manufacturing, mining or fabricating a product
65 which is intended to be sold ultimately for final use or consumption;

66 (7) Tangible personal property which is used exclusively in the manufacturing,
67 processing, modification or assembling of products sold to the United States government or to
68 any agency of the United States government;

69 (8) Animals or poultry used for breeding or feeding purposes, or captive wildlife;

70 (9) Newsprint, ink, computers, photosensitive paper and film, toner, printing plates and
71 other machinery, equipment, replacement parts and supplies used in producing newspapers
72 published for dissemination of news to the general public;

73 (10) The rentals of films, records or any type of sound or picture transcriptions for public
74 commercial display;

75 (11) Pumping machinery and equipment used to propel products delivered by pipelines
76 engaged as common carriers;

77 (12) Railroad rolling stock for use in transporting persons or property in interstate
78 commerce and motor vehicles licensed for a gross weight of twenty-four thousand pounds or
79 more or trailers used by common carriers, as defined in section 390.020, in the transportation of
80 persons or property;

81 (13) Electrical energy used in the actual primary manufacture, processing, compounding,
82 mining or producing of a product, or electrical energy used in the actual secondary processing
83 or fabricating of the product, or a material recovery processing plant as defined in subdivision
84 (5) of this subsection, in facilities owned or leased by the taxpayer, if the total cost of electrical
85 energy so used exceeds ten percent of the total cost of production, either primary or secondary,
86 exclusive of the cost of electrical energy so used or if the raw materials used in such processing
87 contain at least twenty-five percent recovered materials as defined in section 260.200. There
88 shall be a rebuttable presumption that the raw materials used in the primary manufacture of
89 automobiles contain at least twenty-five percent recovered materials. For purposes of this

90 subdivision, "processing" means any mode of treatment, act or series of acts performed upon
91 materials to transform and reduce them to a different state or thing, including treatment necessary
92 to maintain or preserve such processing by the producer at the production facility;

93 (14) Anodes which are used or consumed in manufacturing, processing, compounding,
94 mining, producing or fabricating and which have a useful life of less than one year;

95 (15) Machinery, equipment, appliances and devices purchased or leased and used solely
96 for the purpose of preventing, abating or monitoring air pollution, and materials and supplies
97 solely required for the installation, construction or reconstruction of such machinery, equipment,
98 appliances and devices;

99 (16) Machinery, equipment, appliances and devices purchased or leased and used solely
100 for the purpose of preventing, abating or monitoring water pollution, and materials and supplies
101 solely required for the installation, construction or reconstruction of such machinery, equipment,
102 appliances and devices;

103 (17) Tangible personal property purchased by a rural water district;

104 (18) All amounts paid or charged for admission or participation or other fees paid by or
105 other charges to individuals in or for any place of amusement, entertainment or recreation, games
106 or athletic events, including museums, fairs, zoos and planetariums, owned or operated by a
107 municipality or other political subdivision where all the proceeds derived therefrom benefit the
108 municipality or other political subdivision and do not inure to any private person, firm, or
109 corporation, provided, however, that a municipality or other political subdivision may enter into
110 revenue-sharing agreements with private persons, firms, or corporations providing goods or
111 services, including management services, in or for the place of amusement, entertainment or
112 recreation, games or athletic events, and provided further that nothing in this subdivision shall
113 exempt from tax any amounts retained by any private person, firm, or corporation under such
114 revenue-sharing agreement;

115 (19) All sales of insulin and prosthetic or orthopedic devices as defined on January 1,
116 1980, by the federal Medicare program pursuant to Title XVIII of the Social Security Act of
117 1965, including the items specified in Section 1862(a)(12) of that act (**42 U.S.C. Section 1395y,**
118 **as amended**), and also specifically including hearing aids and hearing aid supplies and all sales
119 of drugs which may be legally dispensed by a licensed pharmacist only upon a lawful
120 prescription of a practitioner licensed to administer those items, including samples and materials
121 used to manufacture samples which may be dispensed by a practitioner authorized to dispense
122 such samples and all sales or rental of medical oxygen, home respiratory equipment and
123 accessories, hospital beds and accessories and ambulatory aids, all sales or rental of manual and
124 powered wheelchairs, stairway lifts, Braille writers, electronic Braille equipment and, if
125 purchased or rented by or on behalf of a person with one or more physical or mental disabilities

126 to enable them to function more independently, all sales or rental of scooters, reading machines,
127 electronic print enlargers and magnifiers, electronic alternative and augmentative communication
128 devices, and items used solely to modify motor vehicles to permit the use of such motor vehicles
129 by individuals with disabilities or sales of over-the-counter or nonprescription drugs to
130 individuals with disabilities, and drugs required by the Food and Drug Administration to meet
131 the over-the-counter drug product labeling requirements in 21 CFR 201.66, or its successor, as
132 prescribed by a health care practitioner licensed to prescribe;

133 (20) All sales made by or to religious and charitable organizations and institutions in
134 their religious, charitable or educational functions and activities and all sales made by or to all
135 elementary and secondary schools operated at public expense in their educational functions and
136 activities;

137 (21) All sales of aircraft to common carriers for storage or for use in interstate commerce
138 and all sales made by or to not-for-profit civic, social, service or fraternal organizations,
139 including fraternal organizations which have been declared tax-exempt organizations pursuant
140 to Section 501(c)(8) or (10) of the 1986 Internal Revenue Code, as amended, in their civic or
141 charitable functions and activities and all sales made to eleemosynary and penal institutions and
142 industries of the state, and all sales made to any private not-for-profit institution of higher
143 education not otherwise excluded pursuant to subdivision (20) of this subsection or any
144 institution of higher education supported by public funds, and all sales made to a state relief
145 agency in the exercise of relief functions and activities;

146 (22) All ticket sales made by benevolent, scientific and educational associations which
147 are formed to foster, encourage, and promote progress and improvement in the science of
148 agriculture and in the raising and breeding of animals, and by nonprofit summer theater
149 organizations if such organizations are exempt from federal tax pursuant to the provisions of the
150 Internal Revenue Code and all admission charges and entry fees to the Missouri state fair or any
151 fair conducted by a county agricultural and mechanical society organized and operated pursuant
152 to sections 262.290 to 262.530;

153 (23) All sales made to any private not-for-profit elementary or secondary school, all sales
154 of feed additives, medications or vaccines administered to livestock or poultry in the production
155 of food or fiber, all sales of pesticides used in the production of crops, livestock or poultry for
156 food or fiber, all sales of bedding used in the production of livestock or poultry for food or fiber,
157 all sales of propane or natural gas, electricity or diesel fuel used exclusively for drying
158 agricultural crops, natural gas used in the primary manufacture or processing of fuel ethanol as
159 defined in section 142.028, natural gas, propane, and electricity used by an eligible new
160 generation cooperative or an eligible new generation processing entity as defined in section
161 348.432, and all sales of farm machinery and equipment, other than airplanes, motor vehicles and

162 trailers, and any freight charges on any exempt item. As used in this subdivision, the term "feed
163 additives" means tangible personal property which, when mixed with feed for livestock or
164 poultry, is to be used in the feeding of livestock or poultry. As used in this subdivision, the term
165 "pesticides" includes adjuvants such as crop oils, surfactants, wetting agents and other assorted
166 pesticide carriers used to improve or enhance the effect of a pesticide and the foam used to mark
167 the application of pesticides and herbicides for the production of crops, livestock or poultry. As
168 used in this subdivision, the term "farm machinery and equipment" means new or used farm
169 tractors and such other new or used farm machinery and equipment and repair or replacement
170 parts thereon and any accessories for and upgrades to such farm machinery and equipment, rotary
171 mowers used exclusively for agricultural purposes, and supplies and lubricants used exclusively,
172 solely, and directly for producing crops, raising and feeding livestock, fish, poultry, pheasants,
173 chukar, quail, or for producing milk for ultimate sale at retail, including field drain tile, and
174 one-half of each purchaser's purchase of diesel fuel therefor which is:

- 175 (a) Used exclusively for agricultural purposes;
176 (b) Used on land owned or leased for the purpose of producing farm products; and
177 (c) Used directly in producing farm products to be sold ultimately in processed form or
178 otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold
179 ultimately in processed form at retail;

180 (24) Except as otherwise provided in section 144.032, all sales of metered water service,
181 electricity, electrical current, natural, artificial or propane gas, wood, coal or home heating oil
182 for domestic use and in any city not within a county, all sales of metered or unmetered water
183 service for domestic use:

184 (a) "Domestic use" means that portion of metered water service, electricity, electrical
185 current, natural, artificial or propane gas, wood, coal or home heating oil, and in any city not
186 within a county, metered or unmetered water service, which an individual occupant of a
187 residential premises uses for nonbusiness, noncommercial or nonindustrial purposes. Utility
188 service through a single or master meter for residential apartments or condominiums, including
189 service for common areas and facilities and vacant units, shall be deemed to be for domestic use.
190 Each seller shall establish and maintain a system whereby individual purchases are determined
191 as exempt or nonexempt;

192 (b) Regulated utility sellers shall determine whether individual purchases are exempt or
193 nonexempt based upon the seller's utility service rate classifications as contained in tariffs on file
194 with and approved by the Missouri public service commission. Sales and purchases made
195 pursuant to the rate classification "residential" and sales to and purchases made by or on behalf
196 of the occupants of residential apartments or condominiums through a single or master meter,
197 including service for common areas and facilities and vacant units, shall be considered as sales

198 made for domestic use and such sales shall be exempt from sales tax. Sellers shall charge sales
199 tax upon the entire amount of purchases classified as nondomestic use. The seller's utility
200 service rate classification and the provision of service thereunder shall be conclusive as to
201 whether or not the utility must charge sales tax;

202 (c) Each person making domestic use purchases of services or property and who uses any
203 portion of the services or property so purchased for a nondomestic use shall, by the fifteenth day
204 of the fourth month following the year of purchase, and without assessment, notice or demand,
205 file a return and pay sales tax on that portion of nondomestic purchases. Each person making
206 nondomestic purchases of services or property and who uses any portion of the services or
207 property so purchased for domestic use, and each person making domestic purchases on behalf
208 of occupants of residential apartments or condominiums through a single or master meter,
209 including service for common areas and facilities and vacant units, under a nonresidential utility
210 service rate classification may, between the first day of the first month and the fifteenth day of
211 the fourth month following the year of purchase, apply for credit or refund to the director of
212 revenue and the director shall give credit or make refund for taxes paid on the domestic use
213 portion of the purchase. The person making such purchases on behalf of occupants of residential
214 apartments or condominiums shall have standing to apply to the director of revenue for such
215 credit or refund;

216 (25) All sales of handicraft items made by the seller or the seller's spouse if the seller or
217 the seller's spouse is at least sixty-five years of age, and if the total gross proceeds from such
218 sales do not constitute a majority of the annual gross income of the seller;

219 (26) Excise taxes, collected on sales at retail, imposed by Sections 4041, [4061,] 4071,
220 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United States Code. The director of
221 revenue shall promulgate rules pursuant to chapter 536 to eliminate all state and local sales taxes
222 on such excise taxes;

223 (27) Sales of fuel consumed or used in the operation of ships, barges, or waterborne
224 vessels which are used primarily in or for the transportation of property or cargo, or the
225 conveyance of persons for hire, on navigable rivers bordering on or located in part in this state,
226 if such fuel is delivered by the seller to the purchaser's barge, ship, or waterborne vessel while
227 it is afloat upon such river;

228 (28) All sales made to an interstate compact agency created pursuant to sections 70.370
229 to 70.441 or sections 238.010 to 238.100 in the exercise of the functions and activities of such
230 agency as provided pursuant to the compact;

231 (29) Computers, computer software and computer security systems purchased for use
232 by architectural or engineering firms headquartered in this state. For the purposes of this

233 subdivision, "headquartered in this state" means the office for the administrative management
234 of at least four integrated facilities operated by the taxpayer is located in the state of Missouri;

235 (30) All livestock sales when either the seller is engaged in the growing, producing or
236 feeding of such livestock, or the seller is engaged in the business of buying and selling, bartering
237 or leasing of such livestock;

238 (31) All sales of barges which are to be used primarily in the transportation of property
239 or cargo on interstate waterways;

240 (32) Electrical energy or gas, whether natural, artificial or propane, water, or other
241 utilities which are ultimately consumed in connection with the manufacturing of cellular glass
242 products or in any material recovery processing plant as defined in subdivision (5) of this
243 subsection;

244 (33) Notwithstanding other provisions of law to the contrary, all sales of pesticides or
245 herbicides used in the production of crops, aquaculture, livestock or poultry;

246 (34) Tangible personal property and utilities purchased for use or consumption directly
247 or exclusively in the research and development of agricultural/biotechnology and plant genomics
248 products and prescription pharmaceuticals consumed by humans or animals;

249 (35) All sales of grain bins for storage of grain for resale;

250 (36) All sales of feed which are developed for and used in the feeding of pets owned by
251 a commercial breeder when such sales are made to a commercial breeder, as defined in section
252 273.325, and licensed pursuant to sections 273.325 to 273.357;

253 (37) All purchases by a contractor on behalf of an entity located in another state,
254 provided that the entity is authorized to issue a certificate of exemption for purchases to a
255 contractor under the provisions of that state's laws. For purposes of this subdivision, the term
256 "certificate of exemption" shall mean any document evidencing that the entity is exempt from
257 sales and use taxes on purchases pursuant to the laws of the state in which the entity is located.
258 Any contractor making purchases on behalf of such entity shall maintain a copy of the entity's
259 exemption certificate as evidence of the exemption. If the exemption certificate issued by the
260 exempt entity to the contractor is later determined by the director of revenue to be invalid for any
261 reason and the contractor has accepted the certificate in good faith, neither the contractor or the
262 exempt entity shall be liable for the payment of any taxes, interest and penalty due as the result
263 of use of the invalid exemption certificate. Materials shall be exempt from all state and local
264 sales and use taxes when purchased by a contractor for the purpose of fabricating tangible
265 personal property which is used in fulfilling a contract for the purpose of constructing, repairing
266 or remodeling facilities for the following:

267 (a) An exempt entity located in this state, if the entity is one of those entities able to issue
268 project exemption certificates in accordance with the provisions of section 144.062; or

269 (b) An exempt entity located outside the state if the exempt entity is authorized to issue
270 an exemption certificate to contractors in accordance with the provisions of that state's law and
271 the applicable provisions of this section;

272 (38) All sales or other transfers of tangible personal property to a lessor who leases the
273 property under a lease of one year or longer executed or in effect at the time of the sale or other
274 transfer to an interstate compact agency created pursuant to sections 70.370 to 70.441 or sections
275 238.010 to 238.100;

276 (39) Sales of tickets to any collegiate athletic championship event that is held in a facility
277 owned or operated by a governmental authority or commission, a quasi-governmental agency,
278 a state university or college or by the state or any political subdivision thereof, including a
279 municipality, and that is played on a neutral site and may reasonably be played at a site located
280 outside the state of Missouri. For purposes of this subdivision, "neutral site" means any site that
281 is not located on the campus of a conference member institution participating in the event;

282 (40) All purchases by a sports complex authority created under section 64.920, and all
283 sales of utilities by such authority at the authority's cost that are consumed in connection with
284 the operation of a sports complex leased to a professional sports team;

285 (41) All materials, replacement parts, and equipment purchased for use directly upon,
286 and for the modification, replacement, repair, and maintenance of aircraft, aircraft power plants,
287 and aircraft accessories;

288 (42) Sales of sporting clays, wobble, skeet, and trap targets to any shooting range or
289 similar places of business for use in the normal course of business and money received by a
290 shooting range or similar places of business from patrons and held by a shooting range or similar
291 place of business for redistribution to patrons at the conclusion of a shooting event;

292 (43) All sales of motor fuel, as defined in section 142.800, used in any watercraft, as
293 defined in section 306.010;

294 (44) Any new or used aircraft sold or delivered in this state to a person who is not a
295 resident of this state or a corporation that is not incorporated in this state, and such aircraft is not
296 to be based in this state and shall not remain in this state more than ten business days subsequent
297 to the last to occur of:

298 (a) The transfer of title to the aircraft to a person who is not a resident of this state or a
299 corporation that is not incorporated in this state; or

300 (b) The date of the return to service of the aircraft in accordance with 14 CFR 91.407 for
301 any maintenance, preventive maintenance, rebuilding, alterations, repairs, or installations that
302 are completed contemporaneously with the transfer of title to the aircraft to a person who is not
303 a resident of this state or a corporation that is not incorporated in this state;

304 **(45) All internet access or the use of internet access, regardless of whether the tax**
305 **is imposed on a provider of internet access or a buyer of internet access. For purposes of**
306 **this subdivision, the following terms shall mean:**

307 **(a) "Internet", computer and telecommunications facilities, including equipment**
308 **and operating software, that compose the interconnected worldwide network, which**
309 **employs the Transmission Control Protocol or Internet Protocol, or any predecessor or**
310 **successor protocols to that protocol, to communicate information of all kinds by wire or**
311 **radio;**

312 **(b) "Internet access", a service that enables users to connect to the internet to**
313 **access content, information, or other services without regard to whether the service is**
314 **referred to as telecommunications, communications, transmission, or similar services, and**
315 **without regard to whether a provider of the service is subject to regulation by the Federal**
316 **Communications Commission as a common carrier under 47 U.S.C. Section 201 et seq. For**
317 **purposes of this subdivision, this term shall include:**

318 **a. The purchase, use, or sale of communications services, including**
319 **telecommunications services as defined under subdivision 14 of subsection 1 of section**
320 **144.010, by a provider of a service described under this subdivision to the extent that such**
321 **communications services are purchased, used, or sold to provide the services described**
322 **under this subdivision or to otherwise enable users to access content, information, or other**
323 **services offered over the internet;**

324 **b. Services that are incidental to the provision of a service described under this**
325 **subdivision if furnished to users as part of such service including a home page, electronic**
326 **mail and instant messaging including voice-capable and video-capable electronic mail and**
327 **instant messaging, video clips, and personal electronic storage capacity;**

328 **c. A home page, electronic mail and instant messaging including voice-capable and**
329 **video-capable electronic mail and instant messaging, video clips, and personal electronic**
330 **storage capacity that are provided independently or that are not packaged with internet**
331 **access.**

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333 **For purposes of this subdivision, "internet access" shall not include voice, audio, or video**
334 **programming or other products and services that use Internet Protocol or any successor**
335 **protocol, except for such services described as included in the definition under this**
336 **subdivision, and for which there is a charge, regardless of whether the charge is stated**
337 **separately from or aggregated with the charge for the other services described under this**
338 **subdivision.**

339 3. Any ruling, agreement, or contract, whether written or oral, express or implied,
340 between a person and this state's executive branch, or any other state agency or department,
341 stating, agreeing, or ruling that such person is not required to collect sales and use tax in this
342 state despite the presence of a warehouse, distribution center, or fulfillment center in this state
343 that is owned or operated by the person or an affiliated person shall be null and void unless it is
344 specifically approved by a majority vote of each of the houses of the general assembly. For
345 purposes of this subsection, an "affiliated person" means any person that is a member of the same
346 controlled group of corporations as defined in Section 1563(a) of the Internal Revenue Code of
347 1986, as amended, as the vendor or any other entity that, notwithstanding its form of
348 organization, bears the same ownership relationship to the vendor as a corporation that is a
349 member of the same controlled group of corporations as defined in Section 1563(a) of the
350 Internal Revenue Code, as amended.

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