

CHAPTER 212
GOVERNMENTS AND NONPROFITS

Chapter rescission date pursuant to Iowa Code section 17A.7: 8/28/29

701—212.1(423) Taxability of profits used by or donated to an educational, charitable, or religious entity. For purposes of the exemption provided in Iowa Code section 423.3(78), the following definitions apply:

212.1(1) Educational. An activity has an “educational purpose” if the activity has as its primary objective to give instruction. The term “educational purpose” includes recreational or cultural activities. Activities that are directly related to the educational process such as intramural sports and tests given to students or prospective students to measure intelligence, ability, or aptitude are considered educational for purposes of this exemption. Municipal or public or nonprofit science centers and libraries are also considered educational for purposes of the exemption.

EXAMPLE 1: A local nonprofit preschool that is exempt from federal tax under Internal Revenue Code (IRC) Section 501(c)(3) has a chili supper to raise money for playground equipment, educational materials, and classroom furniture. The sales transactions from the supper are exempt from sales tax because the total amount of the profits from the chili supper will be used for educational purposes. In addition, purchases made by the preschool may be exempt from tax if the preschool can meet the qualifications to be classified as a private nonprofit educational institution. Rule 701—212.5(423) contains additional information regarding the sale of tangible personal property and performance of services to certain nonprofit corporations.

EXAMPLE 2: A local nonprofit ballet company, which is exempt from federal income tax under IRC Section 501(c)(3), promotes the arts, provides classes and instruction on various types of dance, and sponsors and performs at numerous recitals that are free to the public. At its location, the ballet company has a gift shop in which patrons can purchase T-shirts, dance wear, and costumes. All profits are utilized by the ballet company to pay for its operational expenses and to perform the activities previously mentioned. The sales from this gift shop are exempt from Iowa sales tax to the extent that the profits therefrom are utilized to pay for the stated educational activities.

212.1(2) Religious. “Religious purpose” includes all forms of belief in the existence of superior beings or things capable of exercising power over the human race. It also includes the use of property by a religious society or by a body of persons as a place for public worship.

EXAMPLE 1: A local church, which is exempt from federal income tax under IRC Section 501(c)(3), has a bake sale. All of the bake sale profits are returned to the church for religious purposes. Bake sales are generally exempt from sales tax unless the product is sold for “on-premises consumption” (rule 701—220.5(423) contains more information on the sale of prepared food), but the bake sale profits are exempt from tax in any event because they are to be used for religious purposes. However, generally, any purchases made by the church that are not for resale are subject to sales tax. Iowa Code section 423.3(2) contains the exemption for the sales price of sales for resale.

EXAMPLE 2: Another local church, exempt from federal income tax under IRC Section 501(c)(3), conducts bingo games every Thursday. The profits from the bingo activities will be used for religious purposes. However, bingo and other gambling activities are subject to sales tax regardless of the manner in which the profits are going to be used.

212.1(3) Charitable. A charitable act is an act done out of goodwill, benevolence, and a desire to add or improve the good of humankind in general or any class or portion of humankind, with no pecuniary profit inuring to the person performing the service or giving the gift.

EXAMPLE 1: A local, nonprofit animal shelter that is exempt from federal income tax under IRC Section 501(c)(3) provides shelter, medical care, socialization, and adoption services for homeless animals and, as a fundraiser, sells T-shirts and sweatshirts depicting rescued animals. All of the profits from the sales will go to and be used by the animal shelter to defray the costs it incurs. Sales of the T-shirts and sweatshirts would be exempt from sales tax since the profits from the sales would be expended on a charitable purpose. Items

purchased by the shelter for resale would also be exempt from sales tax. Items purchased by the shelter that are not for resale, such as dog or cat food that will be used by the shelter, would be subject to sales tax.

EXAMPLE 2: A nonprofit hospital, which has received exemption from federal income tax under IRC Section 501(c)(3), operates a gift shop. All of the profits are used to defray costs of hospital care for indigent patients who are unable to pay for such care. Due to the fact that all of the profits from the gift shop are used for a charitable purpose, the sales price would be exempt from sales tax.

a. Profits. The sales price from sales at issue in this exemption is exempt from sales tax to the extent that the profits are used by or donated to a qualifying organization and used for a qualifying activity. For purposes of this rule, “profits” means proceeds remaining after direct expenses have been deducted from the sales price derived from the activity or event. The expenses should be necessary and have an immediate bearing or relationship to the fulfillment of the activity.

Even though an activity or an organization has been recognized as one which could avail itself to the exemption provided by Iowa Code section 423.3(78), it can still be held responsible for sales tax on gross receipts sales price if the department finds, upon additional investigation, that the proceeds expended by the organization were not for educational, religious, or charitable purposes.

At the time of the selling event, a presumption is made that sales tax will not be charged to and collected from the consumer on the property or service sold. This particular exemption is dependent upon how the profits from the sale are expended, which follows the selling event. If after the event a portion of the profits is expended for a noneducational, nonreligious, or noncharitable purpose, tax is due on that portion of the sales price in the tax period in which that portion was expended.

EXAMPLE 1: The cost of food for a fundraising meal would be a direct expense. However, the cost of a victory celebration because the fundraising dinner was a success would not be a direct expense.

EXAMPLE 2: An educational institution hosts an art show. It invests profits from the art show into income-producing property and uses the remainder of the profits to purchase books for the library.

EXAMPLE 3: A nonprofit organization hosts a concert to raise money for neighborhood improvements. The cost of entertainment, if the entertainment is the principal source of proceeds for the activity or event, is a direct expense of the concert.

Unless a specific exemption applies to the entity, purchases by qualifying organizations that are not for resale cannot be purchased free of sales tax.

b. General information. The following is general information that is important to organizations involved in educational, religious, or charitable activities:

(1) There is no authority in the Iowa Code to grant a nonprofit corporation any type of blanket sales or use tax exemption on its purchases because the organization is exempted from federal or state income taxes.

(2) Nonprofit corporations and educational, religious, or charitable organizations are subject to audit and should keep for three years financial records that meet acceptable accounting procedures.

(3) Nonprofit corporations and educational, religious, or charitable organizations can be held responsible for the payment of sales and use taxes as would any other individual, retailer, or corporation.

(4) Nonprofit corporations and educational, religious, or charitable organizations are not required to obtain a sales tax permit or any type of registration number if they are not making taxable sales. There is no provision in the Iowa Code that requires that such organizations have a special sales tax number or registration number and none are issued by the department of revenue. However, if such organizations are making sales that are subject to tax, then a sales tax permit must be obtained.

(5) The mere renting of facilities to be used by another person or organization for educational, religious, or charitable purposes is not an educational, religious, or charitable activity.

(6) When profits from an activity are used to reimburse individuals for the cost of transporting their automobiles to an antique car show, the profits are not considered to be expended for educational purposes, and the gross receipts sales price from the car show are subject to tax.

(7) Activities to raise funds to send members of qualifying educational, religious, or charitable organizations to conventions and other similar events that are directly related to the purposes of the qualifying educational, religious, or charitable organization are within the exemption requirements provided in Iowa Code section 423.3.

(8) An organization whose function is to promote by advertising the use of a particular product that can be purchased at retail does not qualify for the exemption provided by Iowa Code section 423.3(78), even though promotion by advertising may educate the public.

(9) Sales of tangible personal property or specified digital products by civic and municipal art and science centers are of an educational value and the gross receipts therefrom are exempt to the extent the profits are expended for educational, religious, or charitable purposes.

(10) All proceeds from games of skill, games of chance, raffles, and bingo games as defined in Iowa Code chapter 99B are subject to sales tax regardless of who is operating the game and regardless of how the proceeds therefrom are expended, except that those games operated by a county or a city are exempt from collecting the sales tax. When organizations operate such games, they are required to have a sales tax permit and a gambling license.

This rule is intended to implement Iowa Code section 423.3(78).

[ARC 8157C, IAB 7/24/24, effective 8/28/24]

701—212.2(423) Sales to the American Red Cross, the Coast Guard Auxiliary, Navy-Marine Corps Relief Society, and U.S.O. Receipts from the sale of tangible personal property or specified digital products or from rendering, furnishing, or providing taxable services to the American Red Cross, Coast Guard Auxiliary, Navy-Marine Corps Relief Society, and U.S.O. shall be exempt from sales tax.

Purchases made by the American Red Cross, Coast Guard Auxiliary, Navy-Marine Corps Relief Society, or U.S.O. outside of Iowa for use in Iowa shall be exempt from use tax.

This rule is intended to implement Iowa Code sections 423.3(1) and 423.3(31).

[ARC 8157C, IAB 7/24/24, effective 8/28/24]

701—212.3(423) Sales in interstate commerce—goods transported or shipped from this state. When tangible personal property or services are exempt as described in Iowa Code section 423.3(43), sales tax does not apply.

EXAMPLE: Company A sells point-of-sale computer equipment. The company is located in Des Moines, Iowa. Company A enters into a contract with company B to sell the latter company a large number of point-of-sale computers. Company B is located in Little Rock, Arkansas. Company A transfers possession of the computers to a common carrier in Des Moines, Iowa, for shipment to Company B in Little Rock. Sale of the computers is exempt from Iowa sales tax.

212.3(1) Proof of transportation. The most acceptable proof of transportation outside the state is:

- a. A waybill or bill of lading made out to the retailer's order calling for transport; or
- b. An insurance or registry receipt issued by the United States postal department, or a post office department's receipts; or
- c. A trip sheet signed by the retailer's transport agency, which shows the signature and address of the person outside the state who received the transported goods.

212.3(2) Certificate of out-of-state delivery. Iowa retailers making delivery and therefore sales out of state shall use a certificate in lieu of trip sheets. The certificate shall be completed at the time of sale, identifying the merchandise delivered and signed by the purchaser upon delivery.

212.3(3) Exemption not applicable. Sales tax shall apply when tangible personal property is delivered in the state to the buyer or the buyer's agent, even though the buyer may subsequently transport that property out of the state and, also, when tangible personal property is sold in Iowa to a carrier and then delivered by the purchasing carrier to a point outside of Iowa for the carrier's use.

This rule is intended to implement Iowa Code section 423.3(43).

[ARC 8157C, IAB 7/24/24, effective 8/28/24]

701—212.4(423) Educational institution. Tangible personal property, specified digital products, or enumerated services purchased by any private nonprofit educational institution, as defined in Iowa Code section 423.3(17), in the state and used for educational purposes is exempt from sales tax. When purchases are made by any private nonprofit educational institution and the institution is acting as an agent for the sale to any student or other person, the sales are taxable if the proceeds from the sale are not used for educational purposes.

212.4(1) *Taxable sales.* Examples of taxable sales include:

- a. Sales of prepared food or other taxable food (rules 701—220.3(423) to 701—220.6(423) contain more information), whether sold at snack bars, grills, cafeterias, restaurants, or cafes and whether or not sold to students.
- b. Sales from vending machines.
- c. Special event billings to colleges for meals for guests not connected with the college or at events not connected with the college.
- d. Sales to fraternities or sororities for events not billed to the college.
- e. Special event meals by commercial or social clubs, such as chambers of commerce, Rotarians, Kiwanis, alumni, advertising clubs, or political groups, whether or not billed through the college.

212.4(2) *Exempt sales.* Examples of exempt sales include:

- a. The sales of yearbooks to schools that have executed contracts with yearbook companies to purchase yearbooks. These are considered sales for resale and are exempt from tax.
- b. The sales of yearbooks from the school to the students and others. These are considered an educational activity and are exempt to the extent the profits therefrom are expended for educational purposes.
- c. Student board billing to include freshman days and student orientation when billed to the college and included in tuition.
- d. Students and faculty casual board when billed to the college.
- e. Events, when given by faculty for students and billed to the college.
- f. Events sponsored by colleges for visiting dignitaries, or functions related to education and billed to the college.
- g. Meals for students on education field trips and billed to the college.

EXAMPLE 1: A child care center (ABC) is a private nonprofit organization that provides the service of caring for children newborn to six years of age. In addition, ABC teaches children basic learning skills such as shapes, numbers, colors and the alphabet. ABC's primary purpose is to provide child care. The education of the children is a secondary activity. Consequently, ABC is not a private educational institution and would not qualify for exemption from sales tax under Iowa Code section 423.3(17).

EXAMPLE 2: A Preschool (XYZ) is a nonprofit private organization that teaches children from the ages of three to six years old. XYZ Preschool teaches the children basic learning skills such as shapes, numbers, colors and the alphabet by using certified faculty and accredited curriculum. XYZ Preschool is a private nonprofit educational institution and is eligible to claim the exemption to the extent purchases otherwise meet the requirements of Iowa Code section 423.3(17).

This rule is intended to implement Iowa Code section 423.3(17).

[ARC 8157C, IAB 7/24/24, effective 8/28/24]

701—212.5(423) Gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to certain nonprofit corporations exempt from tax.

212.5(1) Unless a specific exemption applies, the sales price of tangible personal property, taxable services, and specified digital products sold to nonprofit corporations is subject to tax. Sales price from the sale or rental of tangible personal property, specified digital products, or from services performed, rendered or furnished to certain nonprofit corporations are exempt from tax. Such organizations can be found in Iowa Code section 423.3(18).

212.5(2) The exemption does not apply to tax paid on the purchase of building materials by a contractor which are used in the construction, remodeling or reconditioning of a facility used or to be used for one or more of the uses set forth in this rule.

This rule is intended to implement Iowa Code section 423.3(18).

[ARC 8157C, IAB 7/24/24, effective 8/28/24]

701—212.6(423) Nonprofit private museums. Iowa Code section 423.3(21) provides a sales tax exemption for certain purchases by nonprofit private museums.

212.6(1) Definitions and examples. A “museum” is all of the following:

a. An institution that is organized for educational, scientific, historical preservation, or aesthetic purposes.

b. An institution that is predominantly devoted to the care and exhibition of a collection of objects in a room, building, or locale.

c. An institution with a collection that is open to the public periodically or at fixed intervals.

d. An institution with a staff available to answer questions regarding the institution's collection.

212.6(2) Exclusions from definition of "museum."

a. An institution is not a "museum" unless it can be included in the ordinary and usual public concept of a museum.

b. Examples of institutions that are not designated as "museums" include aquariums, arboretums, botanical gardens, nature centers, planetariums, and zoos.

[ARC 8157C, IAB 7/24/24, effective 8/28/24]

701—212.7(423) State fair and fair societies. The sales price from sales or services rendered, furnished, or performed by the state fair organized under Iowa Code chapter 173 or a county, district or fair society organized under Iowa Code chapter 174 are exempt from sales tax. This exemption does not apply to individuals, entities, or others that sell or provide services at the state, county, district fair, or fair societies organized under Iowa Code chapters 173 and 174.

This rule is intended to implement Iowa Code sections 423.3(23) and 423.3(35).

[ARC 8157C, IAB 7/24/24, effective 8/28/24]

701—212.8(423) Sales to hospices. Iowa Code section 423.3(28) provides an exemption for freestanding nonprofit hospice facilities. "Hospice" and "hospice care" are defined in 42 CFR §418.3. A "freestanding hospice facility" is any hospice program housed in a building that is dedicated only to the hospice program and that is not attached to any other building or complex of buildings. An individual is "terminally ill" if that individual has a medical prognosis that the individual's life expectancy is six months or less if the illness runs its normal course.

This rule is intended to implement Iowa Code section 423.3(28).

[ARC 8157C, IAB 7/24/24, effective 8/28/24]

701—212.9(423) Art centers.

212.9(1) Iowa Code section 423.3(22) provides an exemption from tax for certain purchases made by private nonprofit art centers.

212.9(2) To qualify for the exemption, the organization will be all of the following:

a. An art center, which is defined as a structure that displays aesthetic objects that are the product of the conscious use of skill and creative imagination.

b. Housed in a structure open to the public periodically or at fixed intervals with regular hours and with staff available to answer visitors' questions.

c. Located in Iowa.

This rule is intended to implement Iowa Code section 423.3(22).

[ARC 8157C, IAB 7/24/24, effective 8/28/24]

701—212.10(423) Tangible personal property purchased from the United States government. Tangible personal property purchased from the United States government or any of the federal governmental agencies shall be exempt from sales tax, but such purchases shall be taxable to the purchaser under the provisions of the use tax law. Persons making purchases from the United States government, unless exempt from the provisions of Iowa Code section 423.5(1) "c" shall report and pay use tax at the current rate on the purchase price of such purchases.

This rule is intended to implement Iowa Code section 423.3.

[ARC 8157C, IAB 7/24/24, effective 8/28/24]

701—212.11(423) Sales by the state of Iowa, its agencies and instrumentalities. The state of Iowa, its agencies and instrumentalities, are required to collect and remit tax on the sales price from taxable retail sales of tangible personal property, specified digital products, and taxable services.

This rule does not apply to sales made by cities and counties in the state of Iowa that are specifically exempted from collecting tax by Iowa Code section 423.3(32).

This rule is intended to implement Iowa Code chapter 423.

[ARC 8157C, IAB 7/24/24, effective 8/28/24]

701—212.12(423) Sales to federal, state, municipal, and tribal governments and instrumentalities.

212.12(1) Exempt sales. Sales are exempt from tax under Iowa Code section 423.3(31) if the tangible personal property, taxable services, and specified digital products are:

- a. Sold directly to an exempt government entity described in Iowa Code section 423.3(31);
- b. Used for a public purpose; and
- c. Not one of the types of the products listed in Iowa Code section 423.3(31)“a”(1) through 423.3(31)“a”(3) that remain taxable even when sold to certain government entities.

212.12(2) Direct, legal incidence of the tax.

a. *Sale to exempt government entities.* A sale to an exempt government entity occurs only if the government entity, pursuant to a contract for sale, takes title or ownership to tangible personal property as a buyer from a seller. Rule 701—219.23(423) contains additional information on construction contracts with designated exempt entities.

b. *Government contractors.* Iowa Code section 423.3(31) does not apply to independent contractors who contract with agencies, instrumentalities, or other entities of government. These contractors do not, by virtue of their contracting with governmental entities, acquire any immunity or exemption from taxation for themselves. Sales to these contractors remain subject to tax, even if those sales are of goods or services that a contractor will use in the performance of a contract with a governmental entity. This principle is applicable to construction contractors who create or improve real property for federal, state, county, and municipal instrumentalities or agencies thereof. The contractors shall be subject to sales and use tax on all tangible personal property they purchase regardless of the identity of their construction contract sponsor.

c. *Examples.*

EXAMPLE 1: Patient A purchases a hospital bed. A percentage of patient A’s bill is paid by federal funds from Medicaid. Patient A has purchased a hospital bed, not the federal government, and Iowa tax is due as a result of this sale. Patient A is the direct purchaser of the bed. The exemption in Iowa Code section 423.3(31) does not apply.

EXAMPLE 2: A is a federal government employee. A travels in Iowa while on government business and purchases prepared meals from restaurants in Iowa. A pays for the meals. The federal government later reimburses A the entire cost of the meals, including the sales tax A paid on the prepared meals. A has purchased meals, and Iowa sales tax should be charged accordingly. The federal government is not the direct purchaser of the prepared meals so the exemption under Iowa Code section 423.3(31) does not apply and neither A nor the federal government qualifies for a tax refund.

212.12(3) Government instrumentalities.

a. *Express statute.* An entity can be an instrumentality of government under Iowa Code section 423.3(31) if a state or federal statute expressly designates the entity as a government instrumentality that is exempt from paying sales tax on its direct purchases.

EXAMPLE 1: Iowa Code section 231.32(5) provides that after the commission on aging designates an area agency on aging, the area agency “shall be considered an instrumentality of the state and shall adhere to all state and federal mandates applicable to an instrumentality of the state.” Thus, a designated area agency on aging is a government instrumentality exempt from tax under Iowa Code section 423.3(31).

EXAMPLE 2: Iowa Code section 12E.3(1) provides the tobacco settlement authority is “a public instrumentality and agency of the state, separate and distinct from the state, exercising public and essential government functions.” Thus, the tobacco settlement authority is a government instrumentality exempt from tax under Iowa Code section 423.3(31).

b. *Lack of express statute defining an entity as a government instrumentality.* If there is no statute that expressly defines an entity as a government instrumentality exempt from tax, the entity may qualify as a government instrumentality if it satisfies all of the following requirements:

- (1) Government controls the detailed physical performance of the entity;
- (2) The entity’s day-to-day operations are supervised by government; and

(3) The entity is created for the purpose of, and is primarily engaged in, the performance of essential government functions.

212.12(4) *Certain corporations organized under federal statutes.* The sale of tangible personal property, specified digital products, or taxable services at retail to the following corporations are sales for final use or consumption to which tax shall apply:

- a. Federal savings and loan associations.
- b. Federal savings and trust companies.
- c. National banks.
- d. Other organizations of like character.

[ARC 8157C, IAB 7/24/24, effective 8/28/24]

701—212.13(423) Fees paid to cities and counties for the privilege of participating in any athletic sport. A “sport” is any activity or experience that involves some movement of the human body and gives enjoyment or recreation. An “athletic” sport is any sport that requires physical strength, skill, speed, or training in its performance. The following activities are nonexclusive examples of athletic sports: baseball, football, basketball, softball, volleyball, golf, tennis, racquetball, swimming, wrestling, and foot racing.

212.13(1) The following is a list of various fees that would be considered fees paid to a city or county for the privilege of participating in any athletic sport, and thus subject to tax under this rule. The list is not exhaustive.

a. Fees paid for the privilege of using any facility specifically designed for use by those playing an athletic sport: fees for use of a golf course, ball diamond, tennis court, swimming pool, or ice skating rink are subject to tax. These fees are subject to tax whether they allow use of the facility for a brief or extended period of time, e.g., a daily fee or season ticket for use of a swimming pool or golf course would be subject to tax. Group rental of facilities designed for playing an athletic sport would also be subject to tax.

b. Fees paid to enter any tournament or league that involves playing an athletic sport would be subject to tax. Both team and individual entry fees are taxable. Fees paid to enter any marathon or foot race of shorter duration would be subject to tax under this rule.

212.13(2) Not subject to tax as fees paid to a city or county for the privilege of participating in any athletic sport under this rule are the following charges. The list is not intended to be exhaustive.

a. Fees paid for lesson or instruction in how to play or to improve one’s ability to play an athletic sport are not subject to tax. Golf and swimming lesson fees are specific examples of such nontaxable charges. The fees are excluded from tax regardless of whether the person receiving the instruction is a child or an adult. Fees charged for equipment rental, regardless of whether this equipment is helpful or necessary to participation in an athletic sport, are not subject to tax. The rental of a golf cart or moveable duck blind would not be subject to tax. The rental of a recreational boat is a transportation service, the gross receipts of which are not subject to tax if provided by a city or county.

b. Sales of merchandise, e.g., food or drink, to persons watching or participating in any athletic sport are not subject to tax.

c. Fees charged to improve any facility where any athletic sport is played are not subject to tax, unless such a fee must be paid to participate in an athletic sport that can be played within the facility.

d. Fees paid by any person or organization to rent any county or city facility or any portion of any county or city park shall not be subject to tax unless the portion of the park or facility is specifically designed for the playing of an athletic sport.

EXAMPLE: A local bridge club pays a fee to use a shelter house and the surrounding grounds at a county park for a picnic. During the course of the picnic, the club members set up a net and use the surrounding grounds to play volleyball. They also improvise a softball field and play a softball game there. The fee that the bridge club has paid to rent the shelter house and surrounding grounds would not be subject to tax.

e. Fees paid for the use of a campground or hiking trail are not subject to tax.

This rule is intended to implement Iowa Code section 423.3(32).

[ARC 8157C, IAB 7/24/24, effective 8/28/24]

701—212.14(423) Property used by a lending organization. The sales price from the sale of tangible personal property or specified digital products to a nonprofit organization organized for the purpose of

lending the tangible personal property to the general public for use by the public for nonprofit purposes are exempt from tax. The exemption contained in this rule is applicable to tangible personal property only, and not to taxable services or specified digital products. It is applicable to the sale of that property and not to its rental to a nonprofit organization. Finally, the exemption is applicable only to property purchased by a nonprofit organization for subsequent rental to the general public. The exemption is not applicable to other property (e.g., office equipment) that the nonprofit organization might need for its ongoing existence.

This rule is intended to implement Iowa Code section 423.3(19).

[ARC 8157C, IAB 7/24/24, effective 8/28/24]

701—212.15(423) Urban transit systems. A privately owned urban transit system that is not an instrumentality of federal, state or county government is subject to sales tax on fuel purchases that are within the urban transit system's charter.

Tax shall not apply to the sales price of fuel purchases made by a privately owned urban transit company for use outside the urban transit system charter in which a fuel tax has been imposed and paid and no refund has been or will be allowed.

This rule is intended to implement Iowa Code sections 423.3(1) and 423.3(31).

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