

117TH CONGRESS
2D SESSION

S. 4768

To amend the Internal Revenue Code of 1986 to tax excess profits of large oil and gas companies, to impose a tax on the repurchase of stock by large oil and gas companies, to end the use of the LIFO method of accounting by large oil and gas trades or businesses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 4, 2022

Mr. WYDEN (for himself, Mr. SCHUMER, Mrs. MURRAY, Ms. STABENOW, Mr. CASEY, Mr. PADILLA, Ms. HIRONO, Mr. BOOKER, Ms. KLOBUCHAR, Mr. REED, Mr. WARNOCK, Mrs. FEINSTEIN, Mr. BLUMENTHAL, and Mr. VAN HOLLEN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to tax excess profits of large oil and gas companies, to impose a tax on the repurchase of stock by large oil and gas companies, to end the use of the LIFO method of accounting by large oil and gas trades or businesses, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Taxing Big Oil Profit-
3 eers Act”.

4 **SEC. 2. TAX ON EXCESS PROFITS OF CERTAIN TAXPAYERS**
5 **FROM OIL AND GAS.**

6 (a) IN GENERAL.—Subchapter A of chapter 1 of the
7 Internal Revenue Code of 1986 is amended by adding at
8 the end the following new part:

9 **“PART VIII—WINDFALL PROFITS FROM OIL AND**
10 **GAS**

“Sec. 59B. Tax on oil and gas excess profits.

11 **“SEC. 59B. TAX ON OIL AND GAS EXCESS PROFITS.**

12 “(a) IMPOSITION OF TAX.—

13 “(1) IN GENERAL.—In addition to any other
14 tax imposed under this chapter, there is hereby im-
15 posed on each applicable taxpayer for any taxable
16 year a tax equal to 21 percent of the excess profits
17 of such taxpayer for such taxable year.

18 “(2) EXCESS PROFITS.—For purposes of this
19 subsection, the term ‘excess profits’ means, with re-
20 spect to any taxable year, the excess of—

21 “(A) the current profits of the taxpayer for
22 the taxable year, over

23 “(B) the normal return of the taxpayer for
24 the taxable year.

1 “(b) APPLICABLE TAXPAYER.—For purposes of this
2 section—

3 “(1) IN GENERAL.—The term ‘applicable tax-
4 payer’ means, with respect to any taxable year, any
5 person if—

6 “(A) the average annual gross receipts of
7 such person for the 3-taxable-year period end-
8 ing with the taxable year which precedes such
9 taxable year equals or exceeds \$1,000,000,000,
10 and

11 “(B) such person is primarily engaged in 1
12 or more oil or natural gas trades or businesses
13 during the taxable year.

14 “(2) SPECIAL RULES FOR APPLICABLE ENTI-
15 TIES.—

16 “(A) IN GENERAL.—If an entity is an ap-
17 plicable entity (as defined in subsection (e)) for
18 any taxable year—

19 “(i) except as provided in paragraphs
20 (1)(A) and (2)(B) of subsection (e), such
21 entity shall not be treated as an applicable
22 taxpayer for purposes of this section, but

23 “(ii) any allocable share of a covered
24 taxpayer of any excess profits of such enti-
25 ty for such taxable year (as determined

under subsection (e)) shall be taken into account by such taxpayer under subsection (a)(1)—

“(I) as excess profits of such taxpayer for the taxable year of such taxpayer with or within which such taxable year of such entity ends, and

“(II) in the same manner as if such taxpayer were an applicable taxpayer.

“(B) COVERED TAXPAYER.—For purposes of this section, the term ‘covered taxpayer’ means, with respect to any taxable year—

“(i) a taxpayer who is an individual (other than an estate or trust) and whose adjusted gross income for such taxable year exceeds \$400,000 (\$200,000 in the case of a married individual filing separately),

“(ii) an estate or trust, or

“(iii) a C corporation which is not an applicable taxpayer.

“(3) OIL OR NATURAL GAS TRADE OR BUSINESS.—The term ‘oil or natural gas trade or busi-

1 ness’ means any trade or business that consists of
2 one or more of the following:

3 “(A) The production of oil or natural gas.

4 “(B) The refining of oil or natural gas.

5 “(C) The processing of oil or natural gas.

6 “(D) The transportation of oil or natural
7 gas.

8 “(E) The distribution of oil or natural gas.

9 “(4) APPLICABLE RULES RELATING TO GROSS
10 RECEIPTS.—For purposes of paragraph (1)(A)—

11 “(A) except as provided in subsection (f),
12 there shall be taken into account only gross re-
13 ceipts which are effectively connected with the
14 conduct of a trade or business within the
15 United States, the Commonwealth of Puerto
16 Rico, or any possession of the United States,
17 and

18 “(B) rules similar to the rules of para-
19 graphs (2) and (3) of section 448(c) shall
20 apply.

21 “(c) CURRENT PROFITS.—For purposes of this sec-
22 tion, the term ‘current profits’ means, with respect to any
23 applicable taxpayer for any taxable year, the taxable in-
24 come of the taxpayer computed under this chapter for

1 such taxable year, determined with the following modifica-
 2 tions:

3 “(1) NO NET OPERATING LOSS DEDUCTION.—

4 No net operating loss deduction shall be allowed.

5 “(2) DEDUCTION FOR EMPLOYEE REMUNERA-
 6 TION.—

7 “(A) IN GENERAL.—Section 162(m) shall
 8 be applied—

9 “(i) by substituting ‘In the case of
 10 any applicable taxpayer (as defined in sec-
 11 tion 59B)’ for ‘In the case of any publicly
 12 held corporation’ in paragraph (1) thereof,

13 “(ii) by substituting ‘covered indi-
 14 vidual (as defined in section
 15 59B(c)(2)(B))’ for ‘covered employee’ each
 16 place it appears in paragraphs (1) and (4)
 17 thereof, and

18 “(iii) by treating any reference to an
 19 ‘employee’ in paragraphs (1) and (4)
 20 thereof as a reference to an ‘individual’.

21 “(B) COVERED INDIVIDUAL.—For pur-
 22 poses of applying this paragraph to section
 23 162(m), the term ‘covered individual’ means
 24 any individual who—

1 “(i) is an officer, director, or employee
2 of the applicable taxpayer for the taxable
3 year, or

4 “(ii) performed services for the appli-
5 cable taxpayer during the taxable year.

6 For purposes of clause (i), any employee who is
7 treated as an employee of the applicable tax-
8 payer under subsection (b) or (c) of section 414
9 shall be treated as an employee for purposes of
10 this subparagraph.

11 “(3) CERTAIN FOREIGN INCOME.—Except as
12 provided in subsection (f)—

13 “(A) CERTAIN INCOME EXCLUDED.—In
14 determining gross income—

15 “(i) subpart F income and global in-
16 tangible low-taxed income included in gross
17 income under sections 951 and 951A shall
18 not be taken into account, and

19 “(ii) foreign-derived intangible income
20 (as defined in section 250) shall not be
21 taken into account unless such income is
22 domestic oil-related income which is de-
23 rived from oil or gas which is exported
24 from the United States.

For purposes of clause (ii), the term ‘domestic oil-related income’ means income (other than dividend or interest income which is passive income (as defined in section 904(d)(2)(A)) derived from sources within the United States or its possessions from activities described in subparagraphs (A) through (E) of section 907(c)(2).

“(B) DENIAL OF SECTION 250 DEDUCTION.—No deduction shall be allowed under section 250.

“(d) NORMAL RETURN.—For purposes of this section, the term ‘normal return’ means, with respect to any applicable taxpayer for any taxable year, an amount equal to 10 percent of the excess of—

“(1) the gross receipts of the taxpayer taken into account in computing the taxpayer’s current profits for the taxable year, including the taxpayer’s allocable share of any gross receipts of a partnership, S corporation, or other pass-thru entity specified by the Secretary under subsection (e)(2)(A), over

“(2) the current profits of the taxpayer for the taxable year.

1 “(e) DEFINITIONS AND RULES RELATING TO APPLI-
2 CABLE ENTITIES.—For purposes of this section—

3 “(1) IN GENERAL.—An applicable entity for
4 any taxable year shall—

5 “(A) compute the current profits, normal
6 return, and excess profits of such entity for
7 such taxable year in the same manner as if
8 such entity were an applicable taxpayer, except
9 that subsection (c) shall be applied by sub-
10 stituting the entity’s ‘non-separately stated tax-
11 able income’ for the entity’s ‘taxable income’,
12 and

13 “(B) report to each partner, shareholder,
14 or other holder of an ownership interest in such
15 entity its allocable share of the entity’s excess
16 profits.

17 “(2) APPLICABLE ENTITY.—The term ‘applica-
18 ble entity’ means, with respect to any taxable year,
19 an entity—

20 “(A) which is a partnership, S corporation,
21 or other pass-thru entity specified by the Sec-
22 retary, and

23 “(B) with respect to which the require-
24 ments of subparagraphs (A) and (B) of sub-
25 section (b)(1) are met for such taxable year, de-

1 terminated in the same manner as if such entity
2 were an applicable taxpayer.

3 “(3) ALLOCABLE SHARE.—A person’s allocable
4 share of the excess profits shall be determined in the
5 same manner as—

6 “(A) in the case of a partnership, such
7 person’s distributive share of the non-separately
8 stated taxable income of the partnership,

9 “(B) in the case of an S corporation, such
10 person’s pro rata share of the non-separately
11 stated taxable income of the S corporation, and

12 “(C) in the case of any other pass-thru en-
13 tity, such person’s share (as determined under
14 rules prescribed by the Secretary) of the non-
15 separately stated taxable income of the entity.

16 “(4) NON-SEPARATELY STATED TAXABLE IN-
17 COME.—The term ‘non-separately stated taxable in-
18 come’ means taxable income computed under—

19 “(A) section 703(a) in the case of a part-
20 nership,

21 “(B) section 1366(a)(1)(B) in the case of
22 an S corporation, and

23 “(C) rules prescribed by the Secretary in
24 the case of any other pass-thru entity.

1 “(f) RULES FOR CERTAIN FOREIGN INCOME ATTRIB-
 2 UTABLE TO IMPORTS INTO THE UNITED STATES.—For
 3 purposes of this section—

4 “(1) IN GENERAL.—In the case of any oil and
 5 gas import income of an applicable taxpayer for any
 6 taxable year—

7 “(A) in computing such taxpayer’s current
 8 profits for such taxable year—

9 “(i) such oil and gas import income
 10 (and any deductions allocable to such in-
 11 come) shall be taken into account, and

12 “(ii) subsection (c)(3) shall not apply
 13 to any subpart F income, global intangible
 14 low-taxed income, or foreign-derived intan-
 15 gible income of such taxpayer to the extent
 16 such income is attributable to such oil and
 17 gas import income, and

18 “(B) gross receipts taken into account in
 19 computing such oil and gas import income shall
 20 be taken into account in computing the gross
 21 receipts of such taxpayer for purposes of sub-
 22 section (b)(1)(A) .

23 “(2) OIL AND GAS IMPORT INCOME.—

24 “(A) CONTROLLED FOREIGN CORPORA-
 25 TIONS.—In the case of a United States share-

holder of a controlled foreign corporation, the term ‘oil and gas import income’ means, with respect to such shareholder for such taxable year, such shareholder’s pro rata share of combined foreign oil and gas income of the controlled foreign corporation which is derived from oil and gas imported into the United States.

“(B) AUTHORITY TO INCLUDE OTHER INCOME.—The Secretary may prescribe such regulations or other guidance to include in oil and gas import income of an applicable taxpayer its pro rata share of any combined foreign oil and gas income of any person related to the taxpayer (other than a controlled foreign corporation) which is derived from oil and gas imported into the United States if the Secretary determines such inclusion is necessary to prevent the avoidance of the tax imposed by this section.

“(3) DEFINITIONS AND SPECIAL RULES.—

“(A) IN GENERAL.—The term ‘combined foreign oil and gas income’ has the meaning given such term by section 907(b)(1), except that in applying paragraphs (1) and (2) of section 907(c) for purposes of section 907(b)(1),

1 the term ‘income’ shall be substituted for ‘tax-
2 able income’ each place it appears.

3 “(B) PRO RATA SHARE.—An applicable
4 taxpayer’s pro rata share of any oil and gas im-
5 port income shall be determined under rules
6 similar to the rules under section 951(a)(2).

7 “(C) PREVENTION OF DOUBLE COUNT-
8 ING.—Oil and gas import income (and any de-
9 ductions allocable to such income) shall not be
10 taken into account under paragraph (1) to the
11 extent already taken into account.

12 “(g) REGULATIONS OR OTHER GUIDANCE.—The
13 Secretary shall prescribe such regulations or other guid-
14 ance as is necessary to carry out this section, including
15 regulations or other guidance for the application of sub-
16 sections (b)(2) and (e), including regulations or other
17 guidance—

18 “(1) for the application of such subsections in
19 the case of tiered entities,

20 “(2) for determining a person’s allocable share
21 where the non-separately stated taxable income of an
22 entity is a loss, and

23 “(3) providing rules for the reporting, including
24 through tiered entities, of excess profits.

1 “(h) TERMINATION.—This section shall not apply to
2 any taxable year beginning after December 31, 2025.”.

3 (b) TAX NOT TAKEN INTO ACCOUNT IN COMPUTING
4 ESTIMATED TAX.—Paragraph (1) of section 6654(f) of
5 the Internal Revenue Code of 1986 is amended by insert-
6 ing “59B or” before “143(m)”.

7 (c) CONFORMING AMENDMENT.—The table of sub-
8 chapters for subchapter A of chapter 1 of the Internal
9 Revenue Code of 1986 is amended by adding at the end
10 the following new item:

“PART VIII—WINDFALL PROFITS FROM OIL AND GAS”.

11 (d) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to taxable years ending after the
13 date of the enactment of this Act.

14 (e) TAX TREATED AS RATE CHANGE.—For purposes
15 of section 15(a) of the Internal Revenue Code of 1986,
16 the tax imposed by the amendments made by this section
17 shall be treated in the same manner as a change in the
18 rate of tax under chapter 1 of such Code.

19 **SEC. 3. EXCISE TAX ON REPURCHASE OF CORPORATE**
20 **STOCK.**

21 (a) IN GENERAL.—Subtitle D of the Internal Rev-
22 enue Code of 1986 is amended by inserting after chapter
23 36 the following new chapter:

1 **“CHAPTER 37—REPURCHASE OF**
 2 **CORPORATE STOCK**

“Sec. 4502. Repurchase of corporate stock by oil and gas companies.

3 **“SEC. 4502. REPURCHASE OF CORPORATE STOCK BY OIL**
 4 **AND GAS COMPANIES.**

5 “(a) GENERAL RULE.—There is hereby imposed on
 6 each covered corporation a tax equal to 25 percent of the
 7 fair market value of any stock of the corporation which
 8 is repurchased by such corporation during the taxable
 9 year.

10 “(b) COVERED CORPORATION.—For purposes of this
 11 section, the term ‘covered corporation’ means, with respect
 12 to any repurchase, any domestic corporation—

13 “(1) the stock of which is traded on an estab-
 14 lished securities market (within the meaning of sec-
 15 tion 7704(b)(1)), and

16 “(2) which is an applicable taxpayer (as defined
 17 in section 59B) for the taxable year in which such
 18 repurchase occurs.

19 “(c) REPURCHASE.—For purposes of this section—

20 “(1) IN GENERAL.—The term ‘repurchase’
 21 means—

22 “(A) a redemption within the meaning of
 23 section 317(b) with regard to the stock of a
 24 covered corporation, and

1 “(B) any transaction determined by the
2 Secretary to be economically similar to a trans-
3 action described in subparagraph (A).

4 “(2) TREATMENT OF PURCHASES BY SPECIFIED
5 AFFILIATES.—

6 “(A) IN GENERAL.—The acquisition of
7 stock of a covered corporation by a specified af-
8 filiate of such covered corporation, from a per-
9 son who is not the covered corporation or a
10 specified affiliate of such covered corporation,
11 shall be treated as a repurchase of the stock of
12 the covered corporation by such covered cor-
13 poration.

14 “(B) SPECIFIED AFFILIATE.—For pur-
15 poses of this section, the term ‘specified affil-
16 iate’ means, with respect to any corporation—

17 “(i) any corporation more than 50
18 percent of the stock of which is owned (by
19 vote or by value), directly or indirectly, by
20 such corporation, and

21 “(ii) any partnership more than 50
22 percent of the capital interests or profits
23 interests of which is held, directly or indi-
24 rectly, by such corporation.

1 “(3) ADJUSTMENT.—The amount taken into
2 account under subsection (a) with respect to any
3 stock repurchased by a covered corporation shall be
4 reduced by the fair market value of any stock issued
5 by the covered corporation during the taxable year,
6 including the fair market value of any stock issued
7 or provided to employees of such covered corporation
8 or a specified affiliate of such covered corporation
9 during the taxable year, whether or not such stock
10 is issued or provided in response to the exercise of
11 an option to purchase such stock.

12 “(d) SPECIAL RULES FOR ACQUISITION OF STOCK OF
13 CERTAIN FOREIGN CORPORATIONS.—

14 “(1) IN GENERAL.—In the case of an acquisi-
15 tion of stock of an applicable foreign corporation by
16 a specified affiliate of such corporation (other than
17 a foreign corporation or a foreign partnership (un-
18 less such partnership has a domestic entity as a di-
19 rect or indirect partner)) from a person who is not
20 the applicable foreign corporation or a specified affil-
21 iate of such applicable foreign corporation, for pur-
22 poses of this section—

23 “(A) such specified affiliate shall be treat-
24 ed as a covered corporation with respect to such
25 acquisition,

1 “(B) such acquisition shall be treated as a
2 repurchase of stock of a covered corporation by
3 such covered corporation, and

4 “(C) the adjustment under subsection
5 (c)(3) shall be determined only with respect to
6 stock issued or provided by such specified affil-
7 iate to employees of the specified affiliate.

8 “(2) SURROGATE FOREIGN CORPORATIONS.—In
9 the case of a repurchase of stock of a covered surro-
10 gate foreign corporation by such covered surrogate
11 foreign corporation, or an acquisition of stock of a
12 covered surrogate foreign corporation by a specified
13 affiliate of such corporation, for purposes of this sec-
14 tion—

15 “(A) the expatriated entity with respect to
16 such covered surrogate foreign corporation shall
17 be treated as a covered corporation with respect
18 to such repurchase or acquisition,

19 “(B) such repurchase or acquisition shall
20 be treated as a repurchase of stock of a covered
21 corporation by such covered corporation, and

22 “(C) the adjustment under subsection
23 (c)(3) shall be determined only with respect to
24 stock issued or provided by such expatriated en-
25 tity to employees of the expatriated entity.

1 “(3) DEFINITIONS.—For purposes of this sub-
2 section—

3 “(A) APPLICABLE FOREIGN CORPORA-
4 TION.—The term ‘applicable foreign corpora-
5 tion’ means any foreign corporation—

6 “(i) the stock of which is traded on an
7 established securities market (within the
8 meaning of section 7704(b)(1)), and

9 “(ii) with respect to which require-
10 ments of subparagraphs (B) and (C) of
11 subsection (b)(1) are met with respect such
12 corporation, except that in applying such
13 subparagraphs, the taxable year of the ac-
14 quisition of stock shall be substituted for
15 the taxable year of purchase of stock.

16 “(B) COVERED SURROGATE FOREIGN COR-
17 PORATION.—The term ‘covered surrogate for-
18 eign corporation’ means any foreign corpora-
19 tion—

20 “(i) which is a surrogate foreign cor-
21 poration (as determined under section
22 7874(a)(2)(B) by substituting ‘September
23 20, 2021’ for ‘March 4, 2003’ each place
24 it appears) the stock of which is traded on
25 an established securities market (within

1 the meaning of section 7704(b)(1)), but
 2 only with respect to taxable years which in-
 3 clude any portion of the applicable period
 4 with respect to such corporation under sec-
 5 tion 7874(d)(1), and

6 “(ii) with respect to which require-
 7 ments of subparagraphs (B) and (C) of
 8 subsection (b)(1) are met with respect to
 9 the taxable year of the repurchase of stock
 10 of such corporation.

11 “(C) EXPATRIATED ENTITY.—The term
 12 ‘expatriated entity’ has the meaning given such
 13 term by section 7874(a)(2)(A).

14 “(e) EXCEPTIONS.—Subsection (a) shall not apply—

15 “(1) to the extent that the repurchase is part
 16 of a reorganization (within the meaning of section
 17 368(a)) and no gain or loss is recognized on such re-
 18 purchase by the shareholder under chapter 1 by rea-
 19 son of such reorganization,

20 “(2) in any case in which the stock repurchased
 21 is, or an amount of stock equal to the value of the
 22 stock repurchased is, contributed to an employer-
 23 sponsored retirement plan, employee stock ownership
 24 plan, or similar plan,

1 “(3) in any case in which the total value of the
2 stock repurchased during the taxable year does not
3 exceed \$1,000,000,

4 “(4) to repurchases by a regulated investment
5 company (as defined in section 851) or a real estate
6 investment trust, or

7 “(5) to the extent that the repurchase is treated
8 as a dividend for purposes of this title.

9 “(f) REGULATIONS AND GUIDANCE.—The Secretary
10 shall prescribe such regulations and other guidance as are
11 necessary or appropriate to administer and to prevent the
12 avoidance of the purposes of this section, including regula-
13 tions and other guidance—

14 “(1) to prevent the abuse of the exceptions pro-
15 vided by subsection (e),

16 “(2) to address special classes of stock and pre-
17 ferred stock, and

18 “(3) for the application of the rules under sub-
19 section (d).

20 “(g) TERMINATION.—This section shall not apply to
21 repurchases after December 31, 2025.”.

22 (b) TAX NOT DEDUCTIBLE.—Paragraph (6) of sec-
23 tion 275(a) of the Internal Revenue Code of 1986 is
24 amended by inserting “37,” before “41”.

1 (c) CLERICAL AMENDMENT.—The table of chapters
 2 for subtitle D of the Internal Revenue Code of 1986 is
 3 amended by inserting after the item relating to chapter
 4 36 the following new item:

“CHAPTER 37—REPURCHASE OF CORPORATE STOCK”.

5 (d) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to repurchases (within the meaning
 7 of section 4502(c) of the Internal Revenue Code of 1986,
 8 as added by this section) of stock after the date of the
 9 enactment of this Act.

10 **SEC. 4. TERMINATION OF LIFO INVENTORIES FOR CERTAIN**
 11 **OIL AND GAS COMPANIES.**

12 (a) IN GENERAL.—Section 472 of the Internal Rev-
 13 enue Code of 1986 is amended by adding at the end the
 14 following new subsection:

15 “(h) TERMINATION FOR OIL AND NATURAL GAS
 16 COMPANIES.—

17 “(1) TERMINATION.—Except as provided in
 18 paragraph (2), subsection (a) shall not apply to any
 19 trade or business primarily consisting of one or more
 20 of the following:

21 “(A) The production of oil or natural gas.

22 “(B) The refining of oil or natural gas.

23 “(C) The processing of oil or natural gas.

24 “(D) The transportation of oil or natural
 25 gas.

1 “(E) The distribution of oil or natural gas.

2 “(2) EXCEPTION.—

3 “(A) IN GENERAL.—Paragraph (1) shall
 4 not apply to any trade or business of a person
 5 for any taxable year if the average annual gross
 6 receipts of all trades or businesses of such per-
 7 son for the 3-taxable-year period ending with
 8 the taxable year which precedes such taxable
 9 year does not exceed \$1,000,000,000.

10 “(B) APPLICABLE RULES.—For purposes
 11 of subparagraph (A) rules similar to the rules
 12 of paragraphs (2) and (3) of section 448(c)
 13 shall apply.”.

14 (b) CHANGE IN METHOD OF ACCOUNTING.—If any
 15 taxpayer is required by the amendments made by this sec-
 16 tion to change its method of accounting in taxable years
 17 beginning after December 31, 2022, then, for purposes of
 18 section 481 of the Internal Revenue Code of 1986—

19 (1) such change shall be treated as initiated by
 20 the taxpayer; and

21 (2) such change shall be treated as made with
 22 the consent of the Secretary of the Treasury.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2022.

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