

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

HOUSE BILL HB1419

By: Covey

AS INTRODUCED

An Act relating to revenue and taxation; enacting the Oklahoma Estate Tax Code; declaring legislative intent; clarifying acts which apply to certain estates; defining terms; setting forth presumption of death; levying certain tax on estates of residents and nonresidents; stating amount of tax; setting forth due date for estate taxes; establishing procedure for filing extensions and returns for estate tax; setting forth procedures for filing amended returns; requiring certain notice of deficiency and requiring certain additional payment; prohibiting expiration of certain limitation periods for assessments; permitting extension of time to pay certain taxes; permitting further extension if certain hardship exists; requiring tax to be paid by personal representative and establishing personal liability for such personal representative; permitting Oklahoma Tax Commission to require certain showing and appraisal; permitting Oklahoma Tax Commission to require production of certain documents; permitting Oklahoma Tax Commission to apply for certain attachment for contempt under certain circumstances; providing for issuance of an attachment; permitting certain punishment for contempt; permitting Oklahoma Tax Commission to apply for certain mandamus; authorizing certain lien to arise on certain property; setting forth time period of lien; permitting lien to divest under certain circumstances; authorizing Oklahoma Tax Commission to issue certificate releasing certain property from lien; setting forth amount of interest on delinquent taxes; authorizing probate court to permit certain persons to sell certain real estate for payment of estate taxes; permitting Oklahoma Tax Commission to appear in certain court proceedings; requiring certain notice of court proceedings be given to Oklahoma Tax Commission; setting forth a generation-skipping transfer tax on certain resident and nonresident transferors; stating amount of tax; providing for payment of generation-skipping transfer tax; requiring certain tax return to be filed on certain date; authorizing extension of time for filing return; permitting amended estate tax returns; providing for underpayment and refunds of certain taxes and setting forth procedure therefor; establishing certain time limitations on assessments; permitting special election for certain valued property and setting forth procedure thereof; authorizing certain additional estate tax for certain recapture of federal estate tax; stating that certain heirs personally liable for certain taxes;

authorizing liens against certain interest; requiring certain heirs to notify the Oklahoma Tax Commission relating to recapture of Oklahoma estate tax; prohibiting limitations on certain assessments from expiring for certain time period; repealing 68 O.S. 1991, Sections 801, as amended by Section 13, Chapter 294, O.S.L. 1997, 802, 802.1, as amended by Section 1, Chapter 334, O.S.L. 1996, 803, 804, as amended by Section 2, Chapter 334, O.S.L. 1996, 805, 806, 807, as amended by Section 2, Chapter 301, O.S.L. 1998, 808, 809, as last amended by Section 1, Chapter 427, O.S.L. 1998, 810, 811, 812, as last amended by Section 4, Chapter 334, O.S.L. 1996, 813, 814, 815, as last amended by Section 5, Chapter 334, O.S.L. 1996, 815.1, as amended by Section 11, Chapter 278, O.S.L. 1994, 816, 816.1, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826 and 827 (68 O.S. Supp. 2000, Sections 801, 802.1, 804, 807, 809, 812, 815 and 815.1), which relate to estate taxes; providing for codification; and providing effective dates.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Estate Tax Code".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.2 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. It is the intent of this act to amend, revise, incorporate and recodify established revenue raising procedures applied to estates of decedents. In order to promote and protect the public safety, health, and welfare of this state, it is also the intent of this act to establish a modern, efficient, and effective estate tax collection and enforcement system, and in order to achieve the purpose and intent of this act, the Legislature finds it necessary to increase conformity with the federal law concerning the imposition of tax on estates of decedents. This act is intended to conform the method in this state of imposing a tax on the estates of

decedents with the method imposed in the Internal Revenue Code and the regulations issued pursuant thereto. It is also the intent of the Legislature that the recodification of the tax levied by this act shall not be considered and construed to be a new tax, but a clarification and simplification of the estate tax as it existed prior to the effective date of this act.

B. This act shall apply to the estate of a decedent who dies after December 31, 2001. For all estates of decedents dying before January 1, 2002, Sections 801 through 827 of Title 68 of the Oklahoma Statutes shall apply.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.3 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in this act, unless the context clearly shows otherwise, the term or phrase:

1. "Federal credit" means the maximum amount of the credit for state death taxes allowable by Section 2011 of the Internal Revenue Code. The term "maximum amount" shall be construed so as to take full advantage of the credit as allowed by the Internal Revenue Code;

2. "Federal generation-skipping transfer tax credit" or "federal GST tax credit" means the maximum amount of the credit for state generation-skipping transfer taxes allowable by Section 2604 of the Internal Revenue Code. The term "maximum amount" shall be construed so as to take full advantage of the credit as allowed by the Internal Revenue Code;

3. "Generation-skipping transfer" means a transfer defined in Section 2611 of the Internal Revenue Code for which a federal GST tax credit is allowable pursuant to Section 2604 of the Internal Revenue Code;

4. "Gross estate" means gross estate defined in Section 2031 of the Internal Revenue Code;

5. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended;

6. "Nonresident" means a decedent who was domiciled outside of the State of Oklahoma at the death of the decedent;

7. "Person" means persons, corporations, limited liability companies, associations, joint stock companies, and business trusts;

8. "Personal representative" means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent;

9. "Original transferor" means the transferor defined in Section 2652 of the Internal Revenue Code, who by grant, gift, trust, will, or otherwise makes a transfer of real or personal property that results in the imposition of federal generation-skipping transfer tax;

10. "Real property" means real property and real property interests, including mineral interests, royalties, production payments, leasehold interests, working interests, and other interests in oil, gas, coal, or any other minerals;

11. "Resident" means a decedent who was domiciled in the State of Oklahoma at death;

12. "Responsible person" means the person liable for the payment of the federal generation-skipping transfer tax;

13. "State" means any state, territory, or possession of the United States and the District of Columbia;

14. "Tangible personal property" means corporeal personal property, including money;

15. "Taxable estate" means taxable estate as defined in Section 2051 of the Internal Revenue Code;

16. "Transfer" means the passing of property or any interest therein, in possession or enjoyment, present or future, by

inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, trust distribution, or appointment in the manner herein described; and

17. "Value" means value as finally determined for transfer tax purposes pursuant to the Internal Revenue Code.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.4 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For the purposes of this act, a person is presumed to have died a resident of this state if:

1. The person has been physically present in this state for more than three hundred sixty-five (365) days in the twenty-four (24) months preceding death, without regard to whether the person may have voted, may have been entitled to vote, or may have been assessed for taxes in this state; or

2. The person was domiciled in this state at death.

B. The burden of proof in an estate tax proceeding is on any person claiming exemption by reason of alleged nonresidence, and orders relating to domicile previously entered in any probate proceedings or administration shall not be conclusive for the purposes of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.5 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. A tax in the amount of the federal credit shall be levied on the transfer of every taxable estate of a resident, subject, where applicable, to the credit provided in subsection B of this section.

B. If any real property or tangible personal property of a resident is located outside this state and is subject to a death tax imposed by another state for which the federal credit is allowed, the amount of the tax due under this section shall be credited with the lesser of:

1. The amount of the death tax paid the other state and credited against the federal estate tax; or

2. An amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of that part of the gross estate over which another state or states have jurisdiction to the same extent this state would exert jurisdiction pursuant to this act with respect to real property and tangible personal property located in this state owned by residents of the other state or states and the denominator of which is the gross estate.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.6 of Title 68, unless there is created a duplication in numbering, reads as follows:

A tax in an amount computed under this section shall be levied on the transfer of every taxable estate of a nonresident located in this state. The tax shall be an amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of the real property and tangible personal property located in this state and the denominator of which is the gross estate.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.7 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The estate tax imposed by Sections 5 and 6 of this act shall be due and payable no later than nine (9) months from the date of the death of the decedent.

B. The personal representative of every estate from which tax is due shall file with the Oklahoma Tax Commission, on or before the due date set forth in subsection A of this section, a return for the tax due under this act. In addition, the personal representative of every estate which is required to file a federal estate tax return shall file with the Tax Commission a copy of the federal estate tax return. The copy of the federal return shall be filed with the Tax

Commission on or before the date the federal estate tax return is required to be filed.

C. If the personal representative has obtained an extension of time for filing the federal estate tax return, the filing required by subsection B of this section shall be similarly extended until the end of the time period granted in the federal extension. Upon obtaining an extension of time for filing the federal estate tax return, the personal representative shall provide the Tax Commission with a copy of the instrument granting the extension.

D. The estate tax imposed by Sections 5 and 6 of this act shall be paid by the personal representative not later than the date when the return covering this tax is required to be filed pursuant to subsections B or C of this section.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.8 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. A personal representative who files an amended federal estate tax return shall immediately file with the Oklahoma Tax Commission an amended Oklahoma estate tax return covering the tax imposed by this act, together with a copy of the amended federal estate tax return. If any additional tax is due under this act pursuant to the amended return, the personal representative shall pay the additional tax at the time of filing the amended return.

B. If, upon final determination of the federal estate tax due, a federal estate tax is determined to be due in excess of the amount originally reported, the personal representative shall, within sixty (60) days after this determination, give written notice of the deficiency to the Tax Commission. If any additional tax is due under this act by reason of this determination, the personal representative shall pay the additional tax at the time of the filing of the notice.

C. The limitations on assessment of taxes provided in this act shall not expire until the later of the following dates:

1. Three (3) years after the personal representative files the tax return pursuant to Section 7 of this act;

2. One hundred eighty (180) days after the personal representative files an amended return pursuant to subsection A of this section; or

3. One hundred eighty (180) days after the personal representative files notice pursuant to subsection B of this section.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.9 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. If the Oklahoma Tax Commission determines that good cause exists, the Tax Commission may extend the time for the payment of the tax imposed by this act for a reasonable period not to exceed twelve (12) months from the original due date.

B. If the Tax Commission determines that the payment of all or any part of the tax imposed by this act would result in undue hardship to the estate, the Tax Commission may extend the time for the payment of that portion of the tax for a reasonable period not to exceed five (5) years from the original due date.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.10 of Title 68, unless there is created a duplication in numbering, reads as follows:

The tax and interest imposed by this act shall be paid by the personal representative. If a personal representative distributes, either in whole or in part, any of the property of the decedent, the estate, or a trust included in the gross estate of the decedent to the heirs, next of kin, distributees, legatees, devisees, or beneficiaries without having paid or secured the tax due pursuant to this act, the personal representative shall be personally liable for



the tax due, or so much of the tax as may remain due and unpaid, to the full extent of the fair market value of property so distributed.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.11 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Tax Commission may require a personal representative to show the property of the decedent to the Tax Commission or its representative upon demand and may employ a suitable person to appraise the property. The appraiser shall prepare an inventory of the property, shall appraise it at its fair market value at the time of the death of the decedent, and shall return the inventory and appraisal to the Tax Commission.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.12 of Title 68, unless there is created a duplication in numbering, reads as follows:

At any time after the expiration of the time required by this act for the filing of any return, the Oklahoma Tax Commission may require the personal representative or any other person or corporation interested in the estate of the decedent or the passing of the property of the decedent to appear at the Tax Commission at a specific time. The Tax Commission may require the personal representative or other interested person or corporation to produce for the use of the Tax Commission all books, papers, or securities which may be within the possession or control of such person and to furnish other information as that person may be able and the Tax Commission may require in determining whether the estate is subject to tax and the amount of tax.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.13 of Title 68, unless there is created a duplication in numbering, reads as follows:

Whenever any person summoned under the provisions of this act neglects or refuses to obey the summons as required, the Oklahoma

Tax Commission may apply to any district court for an attachment for contempt. The district court judge shall hear the application and, if satisfactory proof is made, issue an attachment directed to the sheriff of the county in which the person resides for the arrest of the person for purposes of holding a hearing. At the hearing, the judge may make an appropriate order, not inconsistent with existing laws for the punishment of contempt, to enforce obedience to the requirements of the summons and to punish the person for default or disobedience.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.14 of Title 68, unless there is created a duplication in numbering, reads as follows:

In case of the refusal or neglect of any person summoned under the provisions of Sections 7 through 16 of this act by the Oklahoma Tax Commission to appear before it and produce books, papers, or securities, the Tax Commission may apply to any district court for a mandamus to compel obedience to the summons, and the hearing thereon may be held in Oklahoma County or any other convenient county.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.15 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. A lien for the payment of taxes imposed by this act shall arise on the death of the decedent on all of the real and personal property of the decedent located in this state. Except as provided in Sections 23 and 24 of this act, the lien, once it attaches, shall be enforceable for a period not to exceed ten (10) years from the death of the decedent.

B. Any part of the real and personal property of the decedent subject to the lien provided for in subsection A of this section shall be divested of the lien to the extent it is used for payment of charges against the estate or expenses of its administration as allowed by the court having jurisdiction over the estate.

C. Any part of the personal property of the decedent subject to the lien provided for in subsection A of this section shall be divested of the lien upon the conveyance or transfer of the property to a purchaser or holder of a security interest for adequate and full consideration. In this event, however, the lien shall attach to the proceeds received for the property from the purchaser or holder of a security interest. This subsection shall not apply to real property.

D. When the Oklahoma Tax Commission is satisfied that the estate has fully discharged its tax liability, if any, the Tax Commission shall issue a certificate releasing all property of the estate from the lien. If the Tax Commission is satisfied that the estate has adequately provided for its tax liability, it shall issue a certificate releasing any surplus property of the estate from the lien.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.16 of Title 68, unless there is created a duplication in numbering, reads as follows:

If any amount of tax imposed by this act is not paid on or before its original due date, interest on such amount at the rate of nine percent (9%) per annum shall be paid for the period from such date to the date paid.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.17 of Title 68, unless there is created a duplication in numbering, reads as follows:

The probate court may authorize executors, administrators, personal representatives, and trustees to sell the real estate of a decedent for the payment of the tax in the same manner in which it may authorize them to sell real estate for the payment of debts.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.18 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Tax Commission may appear in any proceeding in any court in which the decree may in any way affect the tax imposed by this act. No decree in any such proceeding or appeal therefrom shall be binding upon this state unless personal notice of such proceeding shall have been given to the Tax Commission.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.25 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. A tax in the amount equal to the federal generation-skipping transfer tax credit shall be levied on every generation-skipping transfer where the original transferor was a resident of this state at the date of original transfer, and subject, where applicable, to the credit provided in subsection B of this section.

B. If a generation-skipping transfer comprises any real property or tangible personal property located outside this state at the date of original transfer and is subject to a tax imposed by another state for which the federal GST tax credit is allowed, the amount of the tax due under this section shall be credited with the lesser of:

1. The amount of the generation-skipping transfer tax paid the other state and credited against the federal generation-skipping transfer tax; or

2. An amount computed by multiplying the federal GST tax credit by a fraction. The numerator of the fraction shall be the value of that part of the generation-skipping transfer over which another state or states have jurisdiction to the same extent this state would exert jurisdiction, pursuant to this act, with respect to real property and tangible personal property located in this state and owned by residents of the other state or states. The denominator shall be the value of the gross generation-skipping transfer giving rise to the federal GST tax credit.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.26 of Title 68, unless there is created a duplication in numbering, reads as follows:

A tax in an amount computed under this section shall be imposed on every generation-skipping transfer where the original transferor was a nonresident of this state at the date of original transfer, but where the generation-skipping transfer comprises real property or tangible personal property located in this state at the date of original transfer. The tax is an amount computed by multiplying the federal GST tax credit by a fraction, the numerator of which is the value of the generation-skipping transfer comprising real property and tangible personal property located in this state and the denominator of which is the value of the gross generation-skipping transfer giving rise to the federal GST tax credit.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.27 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Except as may be provided in this act, the tax imposed pursuant to Sections 19 and 20 of this act shall be due and payable on or before the last day prescribed for filing the federal estate tax return.

B. The responsible person shall file with the Oklahoma Tax Commission, on or before the due date set forth in subsection A of this section, a return for the tax due under this act and a copy of the federal estate tax return.

C. If the responsible person has obtained an extension of time for filing the federal estate tax return, the filing required by subsection B of this section shall be similarly extended until the end of the time period granted in the federal extension. Upon obtaining an extension of time for filing the federal estate tax return, the responsible person shall provide the Tax Commission with a copy of the instrument granting the extension.

D. The tax due pursuant to this act shall be paid by the responsible person not later than the date when the return covering this tax is required to be filed pursuant to subsections B or C of this section.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.28 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. A person who files an amended federal estate tax return shall immediately file with the Oklahoma Tax Commission an amended Oklahoma return covering the tax imposed by this act, together with a copy of the amended federal estate tax return. If any additional tax is due under this act pursuant to the amended return, the responsible person shall pay the additional tax at the time the amended return is filed.

B. If, upon final determination of the federal tax, a federal tax is determined to be due in excess of the amount originally reported, the responsible person shall, within sixty (60) days after this determination, give written notice of the deficiency to the Tax Commission. If any additional tax is due under this act by reason of this determination, the responsible person shall pay the additional tax at the time of the filing of the notice.

C. The limitations on assessment of taxes provided in Sections 19 through this section of this act shall not expire until the later of the following dates:

1. Three (3) years after the responsible person files the tax return pursuant to Section 21 of this act;

2. One hundred eighty (180) days after the responsible person files an amended return pursuant to subsection A of this section; or

3. One hundred eighty (180) days after the responsible person files notice pursuant to subsection B of this section.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.30 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. If, for purposes of the federal estate tax return, an estate makes an election to specially value certain farm or business real property located in this state pursuant to Section 2032A of the Internal Revenue Code, or to claim an exclusion or deduction for one or more qualified family-owned businesses pursuant to Section 2033A of the Internal Revenue Code, a copy of the notice of election, agreement, and all other supporting documents filed with the federal estate tax return shall be attached to the Oklahoma estate tax return when filed. The Oklahoma estate tax return shall also include a written agreement signed by each person who has an interest, whether in possession, in any specially valued real property or qualified family-owned business subject to estate tax in this state consenting to the application of this section through Section 25 of this act.

B. If there occurs a recapture of any federal estate tax pursuant to Section 2032A(c) or 2033A(f) of the Internal Revenue Code, there shall be levied an additional Oklahoma estate tax equal to the adjusted tax difference. The adjusted tax difference shall be the excess, if any, of:

1. The Oklahoma estate tax which would have been imposed pursuant to Sections 5 or 6 of this act if the interest in real property or the qualified family-owned business, with respect to which there has been a recapture event, was valued on the federal estate tax return at its fair market value; or

2. The Oklahoma estate tax previously paid.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.31 of Title 68, unless there is created a duplication in numbering, reads as follows:

Qualified heirs as defined in Sections 2032A and 2033A of the Internal Revenue Code, as applicable, shall be personally liable for the additional tax imposed pursuant to this act. The amount of the adjusted tax difference shall be a lien against the interest in the real property or the qualified family-owned business in favor of this state. The lien shall arise at the time the election is filed under this section and continues until:

1. The liability for tax under this act attributable to the interest has been satisfied or has become unenforceable by lapse of time; or

2. It is established to the satisfaction of the Oklahoma Tax Commission that no additional estate tax liability attributable to the interest may arise pursuant to Sections 23 through 25 of this act.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 800.32 of Title 68, unless there is created a duplication in numbering, reads as follows:

Qualified heirs shall be required to notify the Oklahoma Tax Commission, in a manner prescribed by the Tax Commission, of any event resulting in the recapture of Oklahoma estate tax as provided in Sections 23 through 25 of this act and to pay any additional Oklahoma estate tax resulting from that recapture event within six (6) months of the occurrence of that event. The limitations on assessment of taxes provided in this act shall not expire until three (3) years after the qualified heirs notify the Tax Commission of the recapture event pursuant to this section.

SECTION 26. REPEALER 68 O.S. 1991, Sections 801, as amended by Section 13, Chapter 294, O.S.L. 1997, 802, 802.1, as amended by Section 1, Chapter 334, O.S.L. 1996, 803, 804, as amended by Section 2, Chapter 334, O.S.L. 1996, 805, 806, 807, as amended by Section 2, Chapter 301, O.S.L. 1998, 808, 809, as last amended by Section 1, Chapter 427, O.S.L. 1998, 810, 811, 812, as last amended



by Section 4, Chapter 334, O.S.L. 1996, 813, 814, 815, as last amended by Section 5, Chapter 334, O.S.L. 1996, 815.1, as amended by Section 11, Chapter 278, O.S.L. 1994, 816, 816.1, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826 and 827 (68 O.S. Supp. 2000, Sections 801, 802.1, 804, 807, 809, 812, 815 and 815.1), are hereby repealed.

SECTION 27. Sections 1 through 25 of this act shall become effective January 1, 2002.

SECTION 28. Section 26 of this act shall become effective January 1, 2003.

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