

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 HOUSE BILL 1387

By: Terrill

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5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; authorizing
8 income tax credits for installation of wind energy
9 systems on residential or nonresidential property;
10 specifying percentage of credit based upon taxable
11 year in which costs for equipment incurred;
12 authorizing carryover of credits; requiring itemized
13 accounting of costs; prescribing procedures for use
14 of cost information; requiring rating of wind turbine
15 devices; providing for certain standards applicable
16 to wind energy equipment and requiring purchasers to
17 be provided information prior to purchase; requiring
18 minimum limited warranty period; amending 68 O.S.
19 2001, Section 1357, as last amended by Section 5,
20 Chapter 44, 2nd Extraordinary Session, O.S.L. 2006
21 (68 O.S. Supp. 2006, Section 1357), which relates to
22 sales tax exemptions; providing sales tax exemption
23 for specified wind energy equipment; providing
24 effective dates; and declaring an emergency.

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 2357.301 of Title 68, unless
there is created a duplication in numbering, reads as follows:

A. 1. For all taxable years beginning after December 31, 2006,
any taxpayer, having a wind energy system installed on residential

1 property in this state, may claim a credit against the tax imposed
2 by Section 2355 of Title 68 of the Oklahoma Statutes. In
3 determining the amount of credit allowed, the taxpayer may include
4 in the total costs of the wind energy system such direct expenses
5 incurred for equipment, construction, and installation of the
6 system, less all seller rebates and remunerations of any type
7 resulting from the installation.

8 2. The following percentage of the qualified wind energy system
9 expenditures shall be allowed as a credit under the provisions of
10 this subsection for the taxable year in which the cost is incurred:

11	Taxable Year	Percentage of Expenditure
12	a. 2007	40%
13	b. 2008	40%
14	c. 2009	40%
15	d. 2010	40%
16	e. 2011	40%

17 B. If the tax credit allowable to the taxpayer for the cost of
18 a wind system pursuant to subsection A of this section exceeds the
19 taxes due on the income of the taxpayer, the amount of the claim not
20 used as an offset against the income taxes of a taxable year may be
21 carried forward as a credit against subsequent income tax
22 liabilities for up to ten (10) years.

23 C. 1. For all taxable years beginning after December 31, 2006,
24 any taxpayer, having a wind energy system installed on

1 nonresidential property in this state, may claim a credit against
2 the tax imposed by Section 2355 of Title 68 of the Oklahoma
3 Statutes. In determining the amount of credit allowed, the taxpayer
4 may include in the total costs of the wind system such direct
5 expenses incurred for equipment, construction, and installation of
6 the system, less all seller rebates and remunerations of any type
7 resulting from the installation.

8 2. The following percentage of the qualified wind energy system
9 expenditures shall be allowed as a credit under the provisions of
10 this subsection for the taxable year in which the cost is incurred:

11	Taxable Year	Percentage of Expenditure
12	a. 2007	40%
13	b. 2008	40%
14	c. 2009	40%
15	d. 2010	40%
16	e. 2011	40%

17 3. For the purposes of qualifying for the tax credit provided
18 for in this subsection, more than fifty percent (50%) of the energy
19 produced by the wind energy system must be utilized on the premises
20 of the installation and the wind turbines may not exceed one hundred
21 kilowatt (100 kW) in nameplate power rating.

22 4. If the tax credit allowable to the taxpayer for the cost of
23 a wind system pursuant to this subsection exceeds the taxes due on
24 the income of the taxpayer, the amount of the claim not used as an

1 offset against the income taxes of a taxable year may be carried
2 forward as a credit against subsequent income tax liabilities for up
3 to ten (10) years.

4 D. An itemized accounting of the cost and an affidavit
5 attesting to the facts thereof shall be furnished to the taxpayer by
6 the supplier of the wind energy system. The itemized accounting
7 shall include the amounts properly attributable to the cost of
8 acquisition, construction, and installation of the wind energy
9 system. The taxpayer shall include a copy of said accounting when
10 claiming either credit provided for in this section.

11 E. Wind turbines shall be rated in accordance with the latest
12 performance rating standards published or endorsed by the American
13 Wind Energy Association (AWEA) and the manufacturer must be a member
14 in good standing of AWEA in order to qualify for the credits
15 provided for in this section.

16 F. For wind energy systems, product performance specifications
17 conforming to AWEA standards, as appropriate for small wind
18 turbines, shall be provided to potential purchasers prior to any
19 qualifying purchase. Wind energy resource information, as most
20 recently published by the U.S. Department of Energy or the Oklahoma
21 Wind Power Initiative (OWPI), for the state shall also be provided
22 to potential purchasers prior to any qualifying purchase pursuant to
23 the provisions of this section.

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1 G. For the purpose of either credit provided for in this
2 section, qualifying wind energy systems shall carry, as a minimum, a
3 five-year limited warranty covering defects in design and
4 manufacture. For other than owner-installed systems, qualifying
5 wind energy systems shall also carry, as a minimum, a five-year
6 limited warranty covering defects in installation.

7 SECTION 2. AMENDATORY 68 O.S. 2001, Section 1357, as
8 last amended by Section 5, Chapter 44, 2nd Extraordinary Session,
9 O.S.L. 2006 (68 O.S. Supp. 2006, Section 1357), is amended to read
10 as follows:

11 Section 1357. Exemptions - General.

12 There are hereby specifically exempted from the tax levied by
13 the Oklahoma Sales Tax Code:

14 1. Transportation of school pupils to and from elementary
15 schools or high schools in motor or other vehicles;

16 2. Transportation of persons where the fare of each person does
17 not exceed One Dollar (\$1.00), or local transportation of persons
18 within the corporate limits of a municipality except by taxicabs;

19 3. Sales for resale to persons engaged in the business of
20 reselling the articles purchased, whether within or without the
21 state, provided that such sales to residents of this state are made
22 to persons to whom sales tax permits have been issued as provided in
23 the Oklahoma Sales Tax Code. This exemption shall not apply to the
24 sales of articles made to persons holding permits when such persons

1 purchase items for their use and which they are not regularly
2 engaged in the business of reselling; neither shall this exemption
3 apply to sales of tangible personal property to peddlers, solicitors
4 and other salespersons who do not have an established place of
5 business and a sales tax permit. The exemption provided by this
6 paragraph shall apply to sales of motor fuel or diesel fuel to a
7 Group Five vendor, but the use of such motor fuel or diesel fuel by
8 the Group Five vendor shall not be exempt from the tax levied by the
9 Oklahoma Sales Tax Code. The purchase of motor fuel or diesel fuel
10 is exempt from sales tax when the motor fuel is for shipment outside
11 this state and consumed by a common carrier by rail in the conduct
12 of its business. The sales tax shall apply to the purchase of motor
13 fuel or diesel fuel in Oklahoma by a common carrier by rail when
14 such motor fuel is purchased for fueling, within this state, of any
15 locomotive or other motorized flanged wheel equipment;

16 4. Sales of advertising space in newspapers and periodicals;

17 5. Sales of programs relating to sporting and entertainment
18 events, and sales of advertising on billboards (including signage,
19 posters, panels, marquees, or on other similar surfaces, whether
20 indoors or outdoors) or in programs relating to sporting and
21 entertainment events, and sales of any advertising, to be displayed
22 at or in connection with a sporting event, via the Internet,
23 electronic display devices, or through public address or broadcast
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1 systems. The exemption authorized by this paragraph shall be
2 effective for all sales made on or after January 1, 2001;

3 6. Sales of any advertising, other than the advertising
4 described by paragraph 5 of this section, via the Internet,
5 electronic display devices, or through the electronic media,
6 including radio, public address or broadcast systems, television
7 (whether through closed circuit broadcasting systems or otherwise),
8 and cable and satellite television, and the servicing of any
9 advertising devices;

10 7. Eggs, feed, supplies, machinery and equipment purchased by
11 persons regularly engaged in the business of raising worms, fish,
12 any insect or any other form of terrestrial or aquatic animal life
13 and used for the purpose of raising same for marketing. This
14 exemption shall only be granted and extended to the purchaser when
15 the items are to be used and in fact are used in the raising of
16 animal life as set out above. Each purchaser shall certify, in
17 writing, on the invoice or sales ticket retained by the vendor that
18 the purchaser is regularly engaged in the business of raising such
19 animal life and that the items purchased will be used only in such
20 business. The vendor shall certify to the Oklahoma Tax Commission
21 that the price of the items has been reduced to grant the full
22 benefit of the exemption. Violation hereof by the purchaser or
23 vendor shall be a misdemeanor;

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1 8. Sale of natural or artificial gas and electricity, and
2 associated delivery or transmission services, when sold exclusively
3 for residential use. Provided, this exemption shall not apply to
4 any sales tax levied by a city or town, or a county, or any other
5 jurisdiction in this state;

6 9. In addition to the exemptions authorized by Section 1357.6
7 of this title, sales of drugs sold pursuant to a prescription
8 written for the treatment of human beings by a person licensed to
9 prescribe the drugs, and sales of insulin and medical oxygen.
10 Provided, this exemption shall not apply to over-the-counter drugs;

11 10. Transfers of title or possession of empty, partially
12 filled, or filled returnable oil and chemical drums to any person
13 who is not regularly engaged in the business of selling, reselling
14 or otherwise transferring empty, partially filled, or filled
15 returnable oil drums;

16 11. Sales of one-way utensils, paper napkins, paper cups,
17 disposable hot containers and other one-way carry out materials to a
18 vendor of meals or beverages;

19 12. Sales of food or food products for home consumption which
20 are purchased in whole or in part with coupons issued pursuant to
21 the federal food stamp program as authorized by Sections 2011
22 through 2029 of Title 7 of the United States Code, as to that
23 portion purchased with such coupons. The exemption provided for
24 such sales shall be inapplicable to such sales upon the effective

1 date of any federal law that removes the requirement of the
2 exemption as a condition for participation by the state in the
3 federal food stamp program;

4 13. Sales of food or food products, or any equipment or
5 supplies used in the preparation of the food or food products to or
6 by an organization which:

7 a. is exempt from taxation pursuant to the provisions of
8 Section 501(c)(3) of the Internal Revenue Code, 26
9 U.S.C., Section 501(c)(3), and which provides and
10 delivers prepared meals for home consumption to
11 elderly or homebound persons as part of a program
12 commonly known as "Meals on Wheels" or "Mobile Meals",
13 or

14 b. is exempt from taxation pursuant to the provisions of
15 Section 501(c)(3) of the Internal Revenue Code, 26
16 U.S.C., Section 501(c)(3), and which receives federal
17 funding pursuant to the Older Americans Act of 1965,
18 as amended, for the purpose of providing nutrition
19 programs for the care and benefit of elderly persons;

20 14. a. Sales of tangible personal property or services to or
21 by organizations which are exempt from taxation
22 pursuant to the provisions of Section 501(c)(3) of the
23 Internal Revenue Code, 26 U.S.C., Section 501(c)(3),
24 and:

1 (1) are primarily involved in the collection and
2 distribution of food and other household products
3 to other organizations that facilitate the
4 distribution of such products to the needy and
5 such distributee organizations are exempt from
6 taxation pursuant to the provisions of Section
7 501(c)(3) of the Internal Revenue Code, 26
8 U.S.C., Section 501(c)(3), or

9 (2) facilitate the distribution of such products to
10 the needy.

11 b. Sales made in the course of business for profit or
12 savings, competing with other persons engaged in the
13 same or similar business shall not be exempt under
14 this paragraph;

15 15. Sales of tangible personal property or services to
16 children's homes which are located on church-owned property and are
17 operated by organizations exempt from taxation pursuant to the
18 provisions of the Internal Revenue Code, 26 U.S.C., Section
19 501(c)(3);

20 16. Sales of computers, data processing equipment, related
21 peripherals and telephone, telegraph or telecommunications service
22 and equipment for use in a qualified aircraft maintenance or
23 manufacturing facility. For purposes of this paragraph, "qualified
24 aircraft maintenance or manufacturing facility" means a new or

1 expanding facility primarily engaged in aircraft repair, building or
2 rebuilding whether or not on a factory basis, whose total cost of
3 construction exceeds the sum of Five Million Dollars (\$5,000,000.00)
4 and which employs at least two hundred fifty (250) new full-time-
5 equivalent employees, as certified by the Oklahoma Employment
6 Security Commission, upon completion of the facility. In order to
7 qualify for the exemption provided for by this paragraph, the cost
8 of the items purchased by the qualified aircraft maintenance or
9 manufacturing facility shall equal or exceed the sum of Two Million
10 Dollars (\$2,000,000.00);

11 17. Sales of tangible personal property consumed or
12 incorporated in the construction or expansion of a qualified
13 aircraft maintenance or manufacturing facility as defined in
14 paragraph 16 of this section. For purposes of this paragraph, sales
15 made to a contractor or subcontractor that has previously entered
16 into a contractual relationship with a qualified aircraft
17 maintenance or manufacturing facility for construction or expansion
18 of such a facility shall be considered sales made to a qualified
19 aircraft maintenance or manufacturing facility;

20 18. Sales of any interstate telecommunications services which:

21 a. entitle the subscriber to inward or outward calling
22 respectively between a station associated with an
23 access line in the local telephone system area or a
24 station directly connected to any interexchange

1 carrier's facilities and telephone or radiotelephone
2 stations in diverse geographical locations specified
3 by the subscriber, or

4 b. entitle the subscriber to private communications
5 services which allow exclusive or priority use of a
6 communications channel or group of channels between
7 exchanges;

8 19. Sales of railroad track spikes manufactured and sold for
9 use in this state in the construction or repair of railroad tracks,
10 switches, sidings and turnouts;

11 20. Sales of aircraft and aircraft parts provided such sales
12 occur at a qualified aircraft maintenance facility. As used in this
13 paragraph, "qualified aircraft maintenance facility" means a
14 facility operated by an air common carrier at which there were
15 employed at least two thousand (2,000) full-time-equivalent
16 employees in the preceding year as certified by the Oklahoma
17 Employment Security Commission and which is primarily related to the
18 fabrication, repair, alteration, modification, refurbishing,
19 maintenance, building or rebuilding of commercial aircraft or
20 aircraft parts used in air common carriage. For purposes of this
21 paragraph, "air common carrier" shall also include members of an
22 affiliated group as defined by Section 1504 of the Internal Revenue
23 Code, 26 U.S.C., Section 1504;

1 21. Sales of machinery and equipment purchased and used by
2 persons and establishments primarily engaged in computer services
3 and data processing:

4 a. as defined under Industrial Group Numbers 7372 and
5 7373 of the Standard Industrial Classification (SIC)
6 Manual, latest version, which derive at least fifty
7 percent (50%) of their annual gross revenues from the
8 sale of a product or service to an out-of-state buyer
9 or consumer, and

10 b. as defined under Industrial Group Number 7374 of the
11 SIC Manual, latest version, which derive at least
12 eighty percent (80%) of their annual gross revenues
13 from the sale of a product or service to an out-of-
14 state buyer or consumer.

15 Eligibility for the exemption set out in this paragraph shall be
16 established, subject to review by the Tax Commission, by annually
17 filing an affidavit with the Tax Commission stating that the
18 facility so qualifies and such information as required by the Tax
19 Commission. For purposes of determining whether annual gross
20 revenues are derived from sales to out-of-state buyers or consumers,
21 all sales to the federal government shall be considered to be to an
22 out-of-state buyer or consumer;

23 22. Sales of prosthetic devices to an individual for use by
24 such individual. For purposes of this paragraph, "prosthetic

1 device" shall have the same meaning as provided in Section 1357.6 of
2 this title, but shall not include corrective eye glasses, contact
3 lenses or hearing aids;

4 23. Sales of tangible personal property or services to a motion
5 picture or television production company to be used or consumed in
6 connection with an eligible production. For purposes of this
7 paragraph, "eligible production" means a documentary, special, music
8 video, or a television commercial or television program that will
9 serve as a pilot for or be a segment of an ongoing dramatic or
10 situation comedy series filmed or taped for network or national or
11 regional syndication or a feature-length motion picture intended for
12 theatrical release or for network or national or regional
13 syndication or broadcast. The provisions of this paragraph shall
14 apply to sales occurring on or after July 1, 1996. In order to
15 qualify for the exemption, the motion picture or television
16 production company shall file any documentation and information
17 required to be submitted pursuant to rules promulgated by the Tax
18 Commission;

19 24. Sales of diesel fuel sold for consumption by commercial
20 vessels, barges and other commercial watercraft;

21 25. Sales of tangible personal property or services to tax-
22 exempt independent nonprofit biomedical research foundations that
23 provide educational programs for Oklahoma science students and
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1 teachers and to tax-exempt independent nonprofit community blood
2 banks headquartered in this state;

3 26. Effective May 6, 1992, sales of wireless telecommunications
4 equipment to a vendor who subsequently transfers the equipment at no
5 charge or for a discounted charge to a consumer as part of a
6 promotional package or as an inducement to commence or continue a
7 contract for wireless telecommunications services;

8 27. Effective January 1, 1991, leases of rail transportation
9 cars to haul coal to coal-fired plants located in this state which
10 generate electric power;

11 28. Beginning July 1, 2005, sales of aircraft engine repairs,
12 modification, and replacement parts, sales of aircraft frame repairs
13 and modification, aircraft interior modification, and paint, and
14 sales of services employed in the repair, modification and
15 replacement of parts of aircraft engines, aircraft frame and
16 interior repair and modification, and paint;

17 29. Sales of materials and supplies to the owner or operator of
18 a ship, motor vessel or barge that is used in interstate or
19 international commerce if the materials and supplies:

- 20 a. are loaded on the ship, motor vessel or barge and used
21 in the maintenance and operation of the ship, motor
22 vessel or barge, or
23 b. enter into and become component parts of the ship,
24 motor vessel or barge;

1 30. Sales of tangible personal property made at estate sales at
2 which such property is offered for sale on the premises of the
3 former residence of the decedent by a person who is not required to
4 be licensed pursuant to the Transient Merchant Licensing Act, or who
5 is not otherwise required to obtain a sales tax permit for the sale
6 of such property pursuant to the provisions of Section 1364 of this
7 title; provided:

- 8 a. such sale or event may not be held for a period
9 exceeding three (3) consecutive days,
- 10 b. the sale must be conducted within six (6) months of
11 the date of death of the decedent, and
- 12 c. the exemption allowed by this paragraph shall not be
13 allowed for property that was not part of the
14 decedent's estate;

15 31. Beginning January 1, 2004, sales of electricity and
16 associated delivery and transmission services, when sold exclusively
17 for use by an oil and gas operator for reservoir dewatering projects
18 and associated operations commencing on or after July 1, 2003, in
19 which the initial water-to-oil ratio is greater than or equal to
20 five-to-one water-to-oil, and such oil and gas development projects
21 have been classified by the Corporation Commission as a reservoir
22 dewatering unit;

23 32. Sales of prewritten computer software that is delivered
24 electronically. For purposes of this paragraph, "delivered

1 electronically" means delivered to the purchaser by means other than
2 tangible storage media;

3 33. Sales of modular dwelling units when built at a production
4 facility and moved in whole or in parts, to be assembled on-site,
5 and permanently affixed to the real property and used for
6 residential or commercial purposes. The exemption provided by this
7 paragraph shall equal forty-five percent (45%) of the total sales
8 price of the modular dwelling unit. For purposes of this paragraph,
9 "modular dwelling unit" means a structure that is not subject to the
10 motor vehicle excise tax imposed pursuant to Section 2103 of this
11 title;

12 34. Sales of tangible personal property or services to persons
13 who are residents of Oklahoma and have been honorably discharged
14 from active service in any branch of the Armed Forces of the United
15 States or Oklahoma National Guard and who have been certified by the
16 United States Department of Veterans Affairs or its successor to be
17 in receipt of disability compensation at the one-hundred-percent
18 rate and the disability shall be permanent and have been sustained
19 through military action or accident or resulting from disease
20 contracted while in such active service; provided, sales for the
21 benefit of the person to a spouse of the eligible person or to a
22 member of the household in which the eligible person resides and who
23 is authorized to make purchases on the person's behalf, when such
24 eligible person is not present at the sale, shall also be exempt for

1 purposes of this paragraph. Sales qualifying for the exemption
2 authorized by this paragraph shall not exceed Twenty-five Thousand
3 Dollars (\$25,000.00) per year per individual. Upon request of the
4 Tax Commission, a person asserting or claiming the exemption
5 authorized by this paragraph shall provide a statement, executed
6 under oath, that the total sales amounts for which the exemption is
7 applicable have not exceeded Twenty-five Thousand Dollars
8 (\$25,000.00) per year. If the amount of such exempt sales exceeds
9 such amount, the sales tax in excess of the authorized amount shall
10 be treated as a direct sales tax liability and may be recovered by
11 the Tax Commission in the same manner provided by law for other
12 taxes, including penalty and interest;

13 35. Sales of electricity to the operator, specifically
14 designated by the Oklahoma Corporation Commission, of a spacing unit
15 or lease from which oil is produced or attempted to be produced
16 using enhanced recovery methods, including, but not limited to,
17 increased pressure in a producing formation through the use of water
18 or saltwater if the electrical usage is associated with and
19 necessary for the operation of equipment required to inject or
20 circulate fluids in a producing formation for the purpose of forcing
21 oil or petroleum into a wellbore for eventual recovery and
22 production from the wellhead. In order to be eligible for the sales
23 tax exemption authorized by this paragraph, the oil well production
24 shall not exceed ten (10) barrels per day prior to the use of

1 enhanced recovery methods and the total content of oil recovered
2 prior to the use of enhanced recovery methods shall not exceed one
3 percent (1%) by volume. The exemption authorized by this paragraph
4 shall be applicable only to the state sales tax rate and shall not
5 be applicable to any county or municipal sales tax rate;

6 36. Sales of intrastate charter and tour bus transportation.
7 As used in this paragraph, "intrastate charter and tour bus
8 transportation" means the transportation of persons from one
9 location in this state to another location in this state in a motor
10 vehicle which has been constructed in such a manner that it may
11 lawfully carry more than eighteen persons, and which is ordinarily
12 used or rented to carry persons for compensation. Provided, this
13 exemption shall not apply to regularly scheduled bus transportation
14 for the general public;

15 37. Sales of vitamins, minerals and dietary supplements by a
16 licensed chiropractor to a person who is the patient of such
17 chiropractor at the physical location where the chiropractor
18 provides chiropractic care or services to such patient. The
19 provisions of this paragraph shall not be applicable to any drug,
20 medicine or substance for which a prescription by a licensed
21 physician is required;

22 38. Sales of goods, wares, merchandise, tangible personal
23 property, machinery and equipment to a web search portal located in
24 this state which derives at least eighty percent (80%) of its annual

1 gross revenue from the sale of a product or service to an out-of-
2 state buyer or consumer. For purposes of this paragraph, "web
3 search portal" means an establishment classified under NAICS code
4 518112 which operates web sites that use a search engine to generate
5 and maintain extensive databases of Internet addresses and content
6 in an easily searchable format; and

7 39. Sales of tangible personal property consumed or
8 incorporated in the construction or expansion of a facility for a
9 corporation organized under Section 437 et seq. of Title 18 of the
10 Oklahoma Statutes as a rural electric cooperative. For purposes of
11 this paragraph, sales made to a contractor or subcontractor that has
12 previously entered into a contractual relationship with a rural
13 electric cooperative for construction or expansion of a facility
14 shall be considered sales made to a rural electric cooperative; and

15 40. Sales of tangible personal property that consists of
16 qualified wind energy equipment for which the income tax credit
17 authorized by Section 1 of this act may be claimed.

18 SECTION 3. Section 1 of this act shall become effective January
19 1, 2007.

20 SECTION 4. Section 2 of this act shall become effective July
21 1, 2007.

22 SECTION 5. It being immediately necessary for the preservation
23 of the public peace, health and safety, an emergency is hereby
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1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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