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TAX TOPICS

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Texas Comptroller of Public Accounts

LOCAL SALES AND USE TAX

Local Sales and Use Tax Collection – A Guide for Sellers

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This publication is intended as a general guide and not as a comprehensive resource on the subjects covered. It is not a substitute for legal advice.

LOCAL SALES AND USE TAX COLLECTION – A GUIDE FOR SELLERS

Overview

INTRODUCTION

When you sell taxable goods or services in Texas, you must collect the 6.25 percent ***state* sales or use tax** and the appropriate ***local* sales or use tax**. This guide will help you collect and remit local taxes correctly.

In general, local sales tax is based on the location of the seller's **place of business**. Local *use* tax is based on the location where the customer receives the item. If you ship or deliver goods to your customers, you may have to collect local sales tax, local use tax or both.

The local tax due cannot be more than 2 percent, so the most tax you can collect is **8.25 percent**. Both state and local sales and use taxes are reported on your **Texas Sales and Use Tax Return**.

Use the Comptroller's **Tax Rate Locator** to search for sales tax rates by address.

IN-STORE SALES

When a customer buys something in a store and leaves with it – for example, when a customer buys candy at a grocery store – that is an in-store sale.

If you make in-store sales, you must:

- collect local sales tax based on your store's location; and
- collect the 6.25 percent state sales tax in addition to the local sales tax.

You do not have to collect any local use tax.

SELLERS WITH ONE LOCATION

If you only operate one location, and that location is in Texas, the local sales tax you should collect is based on your Texas location, **unless an exception applies**. See the table below.

If your only location is in Texas, you must:

- collect local sales tax based on your location; and
- collect the 6.25 percent state sales tax in addition to the local sales tax.

You may have to collect local *use* tax if you ship or deliver items to an address in another local taxing jurisdiction.

EXCEPTIONS

If you sell one of these items or services, special instructions apply to your business. See page 11.

Amusement Services
Cable and Satellite TV Services
Florists
Motor Vehicle Parking and Storage Services
Natural Gas and Electricity
Nonresidential Real Property Repair and Remodeling
Separated Contracts for New Construction or Residential Repair and Remodeling Projects
Telecommunications Services
Waste Collection or Waste Removal Services

SPECIAL SITUATIONS (See page 9.)

Drop Shipments
Kiosks
Itinerant Vendors
Traveling Salespersons
Vending Machine Sales

DETERMINING WHICH LOCAL TAXES ARE DUE

You must collect local tax at the location where the sale is "consummated" (or "made").

The following table shows where a sale is consummated. You can find examples in the *In-Depth Look at Local Sales and Use Tax* section.

If your order was...	and the order was...	then you'll collect...
received at a Texas place of business	placed in person	local tax where the order was received
	not placed in person and not fulfilled at a Texas place of business	
	not placed in person, but was fulfilled at a Texas place of business	local tax where the order was fulfilled
not received at a Texas place of business	fulfilled at a Texas place of business	local tax where the order was fulfilled
	not fulfilled at a Texas place of business	local tax at the "ship-to" location



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In-Depth Look at Local Sales and Use Taxes

LOCAL TAXING ENTITIES

There are four types of local taxing entities in Texas:

- **cities** (including incorporated towns and villages);
- **counties**;
- **special purpose districts**; and
- **transit authorities**.

Each taxing entity has its own boundaries. Different types of taxing entities can cross or share boundaries. The combined local sales tax rate cannot be more than 2 percent.

> **Example:** A business located inside the city limits of Corpus Christi is within the boundaries of three types of local taxing jurisdictions: the city of Corpus Christi, the Corpus Christi Crime Control and Prevention District and the Corpus Christi Regional Transit Authority. The total rate of local sales tax imposed at the business location is 2 percent.

Local taxing jurisdiction boundaries do *not* follow U.S. postal codes (ZIP Codes). Many cities in Texas share a common ZIP Code, and many ZIP Codes encompass an area both inside and outside a taxing jurisdiction.

If you are not sure of the local taxes in effect at a given location, use the Comptroller's **Tax Rate Locator** to search for sales tax rates by address.

COMBINED AREAS

There are several areas in Texas where the boundaries of a city or a special purpose district are allowed to overlap the boundaries of another taxing jurisdiction, even though the total local tax rate in these combined areas technically exceeds 2 percent.

The Comptroller maintains a 2 percent rate in these areas and shares the revenues between the overlapping taxing jurisdictions. These **combined areas** are listed on the Comptroller's website.

Sellers collecting local tax in one of these areas must use the combined area local code when reporting sales and use taxes, instead of the regular city or special purpose district code.



Which Local Taxes Are Due?

The following information will help you determine the location where local sales tax or use tax is due. Your collection responsibilities are explained in the **Which Local Taxes Must a Seller Collect?** section. See page 8.

LOCAL *SALES* TAX

Local sales tax is imposed on each sale of a taxable item consummated within the local taxing jurisdiction's boundaries.

Most sales are consummated at the seller's place of business in Texas.

A "**place of business**" is a store, office or other location operated by the seller to sell taxable items. Call centers, showrooms and clearance centers can be places of business.

Any location operated by a seller where the seller receives at least three orders for taxable items during the calendar year is also a place of business. These orders must come from persons other than employees, independent contractors and people affiliated with the seller.

The warehouse from which the person ships those items is not a place of business, unless the warehouse separately qualifies as a place of business.

A seller can have a single place of business in Texas, multiple places of business here or possibly no place of business in Texas, depending on its operations. A seller can also have a *temporary* place of business here, such as a booth at an art fair or craft show.

Local sales taxes for temporary places of business are collected in the same manner as other places of business.



KIOSKS – NOT PLACES OF BUSINESS

A "kiosk" is a booth, stall or similar small, stand-alone area located within another seller's place of business (such as a department store or shopping mall) that is used solely to display merchandise or to submit orders for taxable items from a data entry device. Similar facilities located anywhere other than in another seller's place of business are not kiosks.

A seller can take orders at a kiosk, but a kiosk cannot have an inventory in stock, and items sold at a kiosk cannot be transferred directly to customers. For example, a booth in a department store that sells cosmetics is not a kiosk if customers receive the cosmetics at the time of the purchase.

Even though orders are taken there, a kiosk is **not** a place of business.

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LOCAL SALES AND USE TAX COLLECTION – A GUIDE FOR SELLERS

Apply the following rules to determine where local sales tax is due, unless an exception applies:

1. **Order placed *in person* at a seller's place of business in Texas** – the sale is consummated at that place of business.

   Example: A restaurant that sells pizza is a place of business. When a customer goes to the restaurant in person to place an order for pick-up, the sale is consummated at the restaurant, and local sales tax is due based on the restaurant's location.

2. **Order *fulfilled* at a seller's place of business in Texas** – if the order is not placed in person, the sale is consummated at the place of business where the order is fulfilled. It does not matter if the order was received at the place of business. An order is fulfilled when it is shipped or delivered to a location named by the customer.

   Example: A customer of a pizza restaurant places an order over the telephone or on the restaurant's website. Orders placed by telephone or online are consummated at the restaurant because it is the place of business where the pizza orders are fulfilled. Local sales tax is due based on the location of the restaurant.

3. **Order not fulfilled at a seller's place of business in Texas, but *received* at a seller's place of business in Texas** – the sale is consummated at the place of business in Texas where the order is received.

   Example: A seller uses an online marketplace to sell discount merchandise. Customers place orders on the marketplace's website, which sends automatically generated emails containing order information to the seller. The location where the seller receives these email orders is a place of business because the seller receives more than three orders there during a calendar year.

   The seller has contracted for a third party to store, pick, pack and ship merchandise on the seller's behalf, so orders are not fulfilled at the seller's place of business. The online sales are consummated at the seller's office where the orders are received, and local sales tax is due based on the location of the seller's office.

4. **Order not received or fulfilled at a seller's place of business in Texas, but *fulfilled* at a Texas location** – the sale is consummated at the location in Texas where the order is shipped or delivered.

   Example: A seller operates stores in Texas and Arkansas. The seller also maintains a warehouse in Texas where it stores merchandise.

   Note: A warehouse is not a place of business, unless three or more orders are received at that location during a calendar year from persons who are not employees, independent contractors or people affiliated with the seller.

   A customer visits the seller's store in Arkansas and buys an item that is out of stock. The seller agrees to ship the item from its Texas warehouse to the customer's Texas address.

   The sale is consummated at the customer's address because the order was not received at a place of business in Texas (it was received at an Arkansas store), and it was not fulfilled at a place of business in Texas (it was fulfilled at the warehouse). Local sales tax is due based on the customer's address.

5. **Order received, fulfilled and delivered from a location outside of Texas** – the sale is not consummated in Texas, so local sales tax is not due.

   Local *use* tax may be due if the order is shipped or delivered to a location in Texas that is within the boundaries of a local taxing jurisdiction. You must collect the local use tax if you are engaged in business in the local taxing jurisdiction.

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LOCAL *USE* TAX

Local use tax is due on the storage, use or other consumption of a taxable item within local taxing jurisdiction boundaries. Sellers are only responsible for *collecting* local use tax if they are engaged in business in the local taxing jurisdiction.

Every local taxing jurisdiction with a local *sales* tax also has a local *use* tax. Use tax rates are the same as sales tax rates.

When state *use* tax is due on a taxable item, local use tax is also due at the location where the taxable item is shipped or delivered. If the ship-to location is not in a local taxing jurisdiction, local use tax is not due.

> **Example:** A taxable item purchased at a store in Seattle is shipped to an address in Austin. State use tax of 6.25 percent is due on the taxable item. Local use tax of 2 percent is due based on the ship-to address.

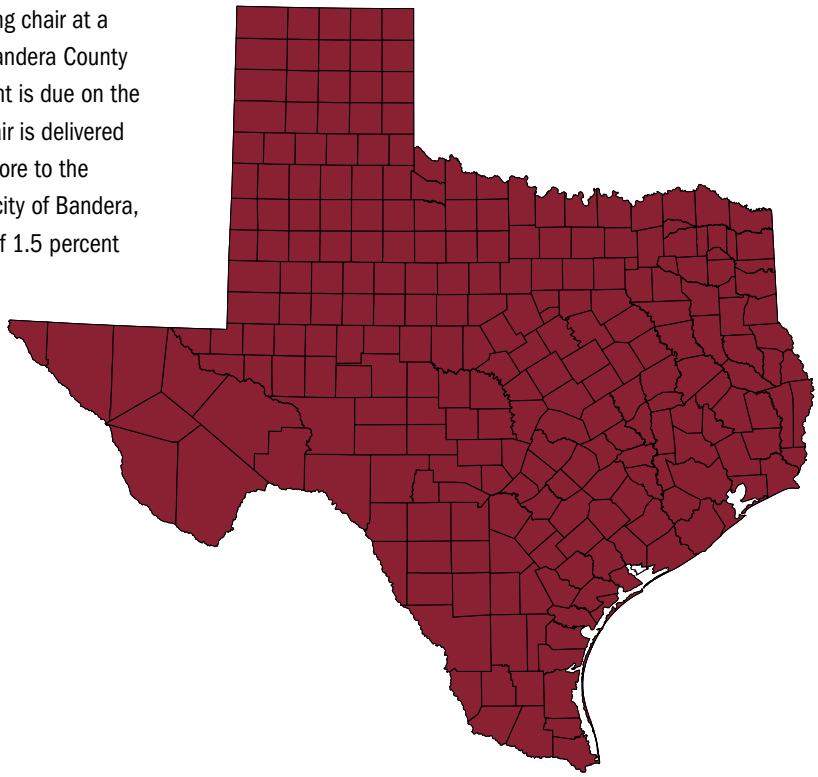
When state sales tax is due on a taxable item, local use tax may also be due, if the item is shipped or delivered to a location in a different local taxing jurisdiction.

Local sales tax and local use tax may be due on the same taxable item when:

- the total amount of local sales tax is less than 2 percent (the total amount of local tax imposed on any transaction cannot be more than 2 percent); and
- the local sales tax and local use tax are not the same type of local tax. If a city sales tax is due on a taxable item, for example, there will be no city use tax, even if the item is shipped or delivered to a different Texas city. In other words, local use tax is not due if a local sales tax of the same type is due.

  Example: Pipe Creek and Bandera are cities in Bandera County, Texas. Pipe Creek does not have a city sales tax, Bandera has a 1.5 percent city sales tax and Bandera County has 0.5 percent county sales tax.

  A person buys a rocking chair at a store in Pipe Creek. Bandera County *sales* tax of 0.5 percent is due on the sale. If the rocking chair is delivered from the Pipe Creek store to the person's home in the city of Bandera, Bandera city *use* tax of 1.5 percent is also due.



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LOCAL SALES AND USE TAX COLLECTION – A GUIDE FOR SELLERS

Which Local Taxes Must You *Collect*?

GENERAL GUIDELINES

You are **authorized** to collect all local taxes due, even if you are not *required* to collect them.

If you are required to collect *state* sales and use tax, you are also required to collect the applicable *local* sales and use tax for every local taxing jurisdiction where you are engaged in business.

In general, you are **engaged in business** in a local taxing jurisdiction if you:

- have a temporary or permanent **location** in the jurisdiction;

  The location may or may not be a place of business. You can operate the location directly or through an agent.

- **make deliveries** into the jurisdiction using company vehicles (whether owned, leased or rented);

  Example: A restaurant located in Spring delivers pizza to nearby businesses and residences, including addresses in The Woodlands. Customers place delivery orders by telephone or on the restaurant's website.

  Local *sales* tax of 1 percent is due on pizza orders at the Spring restaurant because the restaurant is within the Houston Metropolitan Transit Authority. Deliveries to The Woodlands are also subject to special purpose district *use* taxes of 1 percent. Because the pizza restaurant makes deliveries into The Woodlands, the restaurant is engaged in business there and must collect a total of 2.0 percent local tax on those orders.

- **perform services** in the jurisdiction using company employees, authorized service agents or subcontractors;
- **employ sales representatives** in the jurisdiction to solicit business; or

  Sales representatives include independent salespersons operating on behalf of direct sales companies and employees who exhibit products at trade shows or conferences. An affiliate or related business entity that accepts returned items is also a sales representative.

  Example: An out-of-state seller of specialized manufacturing equipment regularly exhibits its product line and solicits sales at an annual trade show in Austin. The seller has no other physical presence in Texas. A few weeks after the trade show, the seller receives orders for equipment from two Texas manufacturers. The first order is delivered by the U.S. Postal Service to a Dallas address. The second order is delivered by the U.S. Postal Service to an address in Austin.

  The seller must collect *state* use tax on the first order. Because the seller is not engaged in business in Dallas, the seller does not have to collect *local* use tax.

  On the second order, the seller must collect state use tax of 6.25 percent, city of Austin use tax of 1 percent and Austin Metropolitan Transit Authority use tax of 1 percent because the seller is engaged in business in Austin.

- earn income from **leasing equipment or other tangible property** to others in the local taxing jurisdiction.

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SPECIAL SITUATIONS

Different rules apply in these special situations.

Drop Shipments

A drop shipment is an order received by a seller at one place and shipped from another place directly to the customer, by either the seller or an unrelated third-party supplier.

Local tax due on drop shipments follows the same rules as other sales.

> **Example:** A seller who operates a place of business in Round Rock receives an order from a customer in El Paso. To fulfill the order, the seller buys items from a supplier located outside of Texas. The customer pays the seller, and the seller instructs the out-of-state supplier to ship the item directly to the customer's location in Texas instead of shipping it to the seller's place of business.
>
> In this case, the seller must collect local sales tax at its place of business in Round Rock, which is the place of business where the order was received, because the order was not fulfilled at a place of business of the seller in Texas.
>
> The outcome is different if the seller does not purchase items from a supplier, but instead fulfills the order at a different place of business in Texas. For example, if the seller receives a telephone order at its place of business in Round Rock, and then fulfills the order at a warehouse in Waco that is also a place of business, then the seller must collect local sales tax at the Waco warehouse.

Kiosks

Although a kiosk is not a place of business, if you operate a kiosk, you are engaged in business in the local taxing jurisdictions where the kiosk is located.

When items ordered at a kiosk are shipped or delivered to a customer from your place of business in Texas, then local sales tax is due at your place of business. If the total local sales tax is less than 2 percent, local use tax may also be due based on the location in Texas where the customer receives the taxable items.

When items ordered at a kiosk are shipped or delivered from a location that is not a Texas place of business of the seller, or from a location outside of Texas, local tax is due based on the location where the taxable items are shipped or delivered. No additional local use tax will be due.

Itinerant Vendors

A seller who does not operate a place of business in Texas, and who travels to various locations to solicit sales, is an itinerant vendor. Itinerant vendors collect tax for all local taxing jurisdictions in Texas where deliveries are made or where the customer takes possession of the items.

> **Example:** A person selling rugs from a truck in San Antonio must collect all applicable local San Antonio sales taxes due on each sale.

Traveling Salespersons

A traveling salesperson visits potential buyers in person to solicit sales. Generally, a traveling salesperson does not carry inventory, but may carry samples or demos to show potential buyers.

Orders taken by a traveling salesperson are received at the place of business of the seller where the salesperson is based. Any location operated by a seller that serves as a base of operations for a traveling salesperson, or that provides administrative support to a traveling salesperson, is a place of business.

Vending Machine Sales

Vending machine operators are considered itinerant vendors and must collect local sales tax for the taxing jurisdictions where the vending machines are located.

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Is Local Use Tax Due along with Local Sales Tax?

If you are **engaged in business** in more than one local taxing jurisdiction, you may have to collect both local *sales* tax and local use tax on the same transaction. **Note:** The customer is responsible for paying directly to the Comptroller any local taxes you do not collect.

Use these four rules to determine if local use tax is due in addition to local sales tax.

FOUR RULES TO FOLLOW

1. **2 percent cap**
   The maximum amount of local sales and use tax due on a sale in Texas is 2 percent. You cannot collect more than a total of 2 percent combined local sales and use taxes. If a local use tax cannot be collected or accrued at its full rate without going over 2 percent, you cannot collect it.
2. **Tax type order**
   You must collect applicable local use taxes in the following order:
   1. City
   2. County
   3. Special purpose districts
   4. Transit authorities
3. **Different tax type**
   You cannot collect a local use tax if a local sales tax of the same type is due.
4. **Engaged in business**
   You only have to collect applicable local use taxes if you are **engaged in business** in the local taxing jurisdiction.

Example: A furniture seller has a store with an attached warehouse located outside the city limits of Corsicana, in Navarro County. Customers place orders in person at the store, and the seller fulfills the orders at its warehouse. The seller offers free delivery service to locations within 50 miles of the store/warehouse.

A customer shopping at the Navarro County store orders furniture for delivery to a location inside the city limits of Ennis. Since the store where the order is received is outside the city limits of Corsicana, no city sales tax is due. The seller must, however, collect county sales tax of 0.5 percent for Navarro County. Because the total amount of local sales tax due is less than 2 percent, additional local use taxes may apply based on the point of delivery.

The city of Ennis imposes a 1.5 percent city sales and use tax. Since the seller is delivering the furniture to the buyer, the seller is engaged in business in Ennis and must collect the city's use tax. Therefore, the total amount of sales and use tax that the seller must collect on the transaction is 8.25 percent, consisting of 6.25 percent state sales tax, 0.5 percent Navarro County sales tax and 1.5 percent Ennis city use tax.

A second customer places an order in person at the store for delivery to an address in Waxahachie. Again, the seller must collect Navarro County sales tax of 0.5 percent.

Waxahachie imposes a local city sales and use tax of 2 percent. Since the seller is delivering the furniture to the buyer, the seller is engaged in business in Waxahachie. The seller cannot, however, collect the total amount of the Waxahachie city use tax (2 percent) without exceeding the 2 percent cap. Therefore, the total amount of sales and use tax that the seller must collect on the transaction is 6.75 percent, consisting of 6.25 percent state sales tax and 0.5 percent Navarro County sales tax.

You can use the Comptroller's **Tax Rate Locator** to search for sales and use tax rates by address.

Exceptions

The general rules do not apply to the following goods and services:

AMUSEMENT SERVICES

Collect local taxes on **amusement services** where the performance or event occurs.

CABLE AND SATELLITE TV SERVICES

Collect local taxes on **cable television services** where the customer receives the service.

Satellite service, commonly known as "direct-to-home" satellite service, is exempt from local tax under the Federal Telecommunications Act of 1996.

FLORISTS

Florists collect local taxes based on the location of the place of business that takes the order, regardless of where the order is fulfilled or delivered.

MOTOR VEHICLE PARKING AND STORAGE

Collect local taxes based on the location where the **parking service** occurs.

NATURAL GAS AND ELECTRICITY

Collect local taxes based on where the customer receives the **gas or electricity**.

Residential use of gas and electricity is exempt from county, transit and most special purpose district taxes, and in many cities, city tax.

Lists of all cities and special purpose districts currently imposing sales tax on the residential use of gas and electricity and those cities and special purpose districts eligible to do so are available online at **comptroller.texas.gov/taxinfo/utility/reflist.html**.

NONRESIDENTIAL REAL PROPERTY REPAIR AND REMODELING SERVICES

If you provide repair or remodeling services on **nonresidential** improvements to realty, the entire charge is subject to local tax, regardless of whether it is billed as a separated or lump-sum charge.

Collect local taxes for labor and materials based on the location of the job site.

SEPARATED CONTRACTS FOR NEW CONSTRUCTION OR RESIDENTIAL REPAIR AND REMODELING PROJECTS

If you perform new residential construction, new commercial construction, or residential repair and remodeling under a **separated contract**, you must collect local taxes on the separately stated charge for materials based on the location of the job site.

Note: This exception does not apply to materials used or consumed in a lump-sum contract for residential repair and remodeling or to new construction (residential or nonresidential).

For information about nonresidential real property repair and remodeling services, see above.

Exceptions continue on the next page.

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TELECOMMUNICATIONS SERVICES

Telecommunications services are subject to the state sales tax, but are not automatically subject to *local* sales tax.

By federal law, all interstate telecommunications are excluded from the tax. A list of jurisdictions that impose tax on telecommunications services is available online at: **comptroller.texas.gov/taxinfo/taxpubs/tx96_339.html**.

Landline Telecommunications Services

Collect local taxes, when due, on landline telecommunications services sold on a call-by-call basis based on the location of the telephone or other device where the call or other transmission originates.

If you cannot determine where the communication originates, collect local tax based on the address where the service is billed.

Mobile Telecommunications Services

Collect local taxes on mobile telecommunications services (such as cell phones) based on the place of primary use. The place of primary use must be the customer's residential street address or the primary business street address within the service provider's licensed service area.

If the person who contracts for the service with the service provider is not the end user, the end user's place of primary use determines which local taxes are due.

WASTE COLLECTION AND WASTE REMOVAL SERVICES

Collect local taxes where the **waste** is collected or picked up for removal.

More Information

The information below is related to collecting and remitting Texas local sales and use tax.

TEXAS TAX CODE AND COMPTROLLER RULES

Links to the Texas Tax Code and Comptroller rules are on our website at **comptroller.texas.gov/taxinfo/local/**.

- **Rule 3.334 – Local Sales and Use Taxes**
- **Rule 3.298 – Amusement Services**
- **Rule 3.313 – Cable Television Service and Bundle Cable Service**
- **Rule 3.291 – Contractors**
- **Rule 3.307 – Florists**
- **Rule 3.293 – Food; Food Products; Meals; Food Service** (for information about vending machines)
- **Rule 3.315 – Motor Vehicle Parking and Storage**
- **Rule 3.295 – Natural Gas and Electricity**
- **Rule 3.357 – Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance**
- **Rule 3.356 – Real Property Service**
- **Rule 3.286 – Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules**
- **Rule 3.344 – Telecommunications Services**

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