

JAMAICA

No. 9 - 2014

I assent,

[L.S.]

(sgd) P. L. Allen

Governor-General.

30th September, 2014

AN ACT to Enhance the collection of taxes by amending various enactments that provide for the collection of taxes; and for connected matters.

[1st October, 2014]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Tax Collection (Miscellaneous Provisions) Act, 2014, and shall come into operation on the 1st day of October, 2014.

Short title
and
commence-
ment.

[No.] *The Tax Collection (Miscellaneous Provisions)*
Act, 2014

Amendment
of
enactments
in Schedule.

2.—(1) The enactments specified in the first column of the Schedule are amended in the manner specified in relation to them in the second column of the Schedule.

(2) Each amendment shall be construed as one with the enactment to which it relates.

Saving.

3. Nothing contained in this Act shall be construed to affect the validity of anything done, before the coming into operation of this Act, under any enactment that is amended by section 2.

SCHEDULE

(Section 2)

Amendment of Enactments

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General
Consumption
Tax Act

1. In section 46(6), delete the words “interest at a rate of two and one-half per cent per month or part thereof,” and substitute the words “interest at the rate prescribed by order made under section 2A of the Tax Collection Act”.

2. In subsections (1) and (4) of section 54, delete the words “the rate of two and one-half per cent per month or part thereof” and substitute the words “the rate prescribed by order made under section 2A of the Tax Collection Act”.

Income Tax
Act

1. Insert the following next after section 71 as sections 71A and 71B—

“Additional
requirement
for certain
persons to
file returns.

71A.—(1) Notwithstanding any other provision of this Act, every person to whom this section applies shall, in respect of each year of assessment, file a return in such form, and containing such particulars, as may be prescribed, regardless of whether that person-

- (a) is liable to pay income tax in respect of that year of assessment; or
- (b) has income from any source for that year of assessment.

(2) This section applies to the following persons-

- (a) a body corporate that is incorporated, registered or constituted under any enactment;
- (b) a trust or other institution (whether incorporated or not) that is registered as a charitable organization under the *Charities Act*; and

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- (c) any person (including an individual) who carries on, or has carried on, a trade, profession, vocation or business and who is prescribed for the purposes of this section by order of the Minister, subject to negative resolution of the House of Representatives.

Penalty for
late filing of
return.

71B.—(1) Notwithstanding any other provision of this Act, every person who fails to file a return under this Act within the time required shall be liable to pay a penalty of five thousand dollars for each month, or part of a month, during which the failure to file the return continues, up to a maximum of one million dollars, in addition to any other penalty that may be imposed on the person in respect of failure to file a return.

(2) A penalty that is incurred under subsection (1) shall be considered to be tax payable by the person who has incurred the penalty, in addition to any other tax that is payable by that person.

(3) The Commissioner General may waive or reduce a penalty that is incurred under subsection (1) if the Commissioner General is satisfied that there are circumstances that justify doing so.”

2. In section 79—

- (a) in subsection (1)(b), delete the words “the rate of eight *per centum* per annum or at such other rate

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as the Minister may, subject to subsection (4), from time to time, by order prescribe” and substitute the words “the rate prescribed by order made under section 2A of the Tax Collection Act”; and

(b) delete subsection (4).

Revenue
Administration
Act

1. Insert next after section 17F the following as section

17FA-

“Disclosure
of
information
to credit
bureaus.

17FA.—(1) Subject to subsection (2), a Commissioner, or an officer of a revenue department who has in any particular case been authorized by the Commissioner of that department for the purposes of this section, may disclose the following information in respect of a tax debtor to a credit bureau for the purposes of the *Credit Reporting Act*-

- (a) the identity of the tax debtor; and
- (b) any amount owed by the tax debtor to the Commissioner General.

(2) Information may not be disclosed pursuant to subsection (1) earlier than five days after-

- (a) the tax debtor has acknowledged in writing the amount owed, including by way of filing a return of tax, and has not paid the amount;
- (b) the time for making any objection or appeal in respect of the amount owed has expired, and the amount has not been paid;

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- (c) in the event of an objection or appeal in respect of the amount owed, the objection or appeal has been finally determined in accordance with the enactment under which the tax was imposed, and the amount has not been paid; or
- (d) the amount owed has been finally determined by a court, otherwise than pursuant to an objection or appeal referred to in paragraph (c), and the amount has not been paid.

(3) For the purposes of this section-

“credit bureau” means a credit bureau within the meaning of section 2(1) of the *Credit Reporting Act*;

“tax” means tax within the meaning of section 2(1) of the *Tax Collection Act* and includes a penalty within the meaning of that provision;

“tax debtor” means a tax debtor within the meaning of section 2(1) of the *Tax Collection Act*.

(4) For the purposes of the *Credit Reporting Act*—

- (a) information that is provided by a Commissioner or an officer under subsec-

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tion (1) is deemed to be credit information within the meaning of section 2(1) of that Act; and

- (b) a Commissioner or officer who provides information pursuant to subsection (1) is deemed to be a credit information provider within the meaning of section 2(1) of that Act.”.

2. In section 17GA-

- (a) in subsection (1), delete the words “the Commissioner General” and substitute the words “a Commissioner”; and
- (b) in subsections (2) and (3), delete the words “the Commissioner General” and substitute the words “the Commissioner”.

3. In section 17GB-

- (a) in subsection (1), delete the words “the Commissioner General” where they first occur and substitute the words “a Commissioner”, and delete the words “the Commissioner General” in the second and third places where they occur and substitute in each place the words “a Commissioner”; and
- (b) in subsection (2), delete the words “the Commissioner General” wherever they occur and substitute therefor the words “the Commissioner”.

4. In section 17IA-

- (a) in subsection (1), delete the words “the Commissioner General” and substitute therefor the words “a Commissioner”; and
- (b) in subsections (2) and (3), delete the words “the Commissioner General” wherever they occur and

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substitute therefor in each case the words “the Commissioner”.

5. In section 17IB(1), delete the words “the Commissioner General” where they first occur and substitute therefor the words “a Commissioner”, and delete the words “the Commissioner General” in the second and third places where they occur and substitute therefor in each case the words “the Commissioner”.

6. In section 17KA(1), delete the words “the Commissioner General” where they first occur and substitute the words “a Commissioner”, and delete the words “the Commissioner General” in the second place where they occur and substitute therefor in each case the words “the Commissioner”.

7. Insert next after section 17N the following as Part VID—

“

PART VID. *Electronic Communications*

Commis-
sioner
General may
establish
electronic
communica-
tions system.

17O.—(1) The Commissioner General may establish an electronic communication system (in this section referred to as the “system”), including provision for any or all of the following operations-

- (a) filing of electronic documents with the Commissioner General;
- (b) service or issue of electronic documents by the Commissioner General;
- (c) payment or collection of tax by electronic means.

(2) For the purposes of subsection (1), the Commissioner General may make rules providing for any or all of the following-

- (a) registration of persons as participants in the

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system, including provision for the issuance and cancellation of authentication codes;

- (b) the type of documents that may be sent through the system, including the format and manner of sending them, and the issuance and cancellation of registration numbers for documents;
- (c) the format for, and the content of, information that is to be included in documents sent through the system;
- (d) the manner of dealing with situations arising upon any breakdown or interruption in the operation of the system, including the correction of any errors, or the amendment of any documents, information or procedures, that may be required as a result of the breakdown or interruption;
- (e) secrecy to be maintained, whether by persons using the system on their own behalf or using the system on behalf of other persons;
- (f) the determination of when a document that is filed through use of the system is received by the Commissioner General;

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(g) the determination of when a document that is served through use of the system is considered to have been served on a person by the Commissioner General;

(h) any other matter for the better administration or operation of the system.”.

(3) The filing, service or issuance of documents, or the payment or collection of tax by means of the system shall be valid and effective for all purposes, subject to any rule of law to the contrary.

(4) An electronic document that is communicated by means of the system is deemed to have been received by the person to whom it is communicated, unless the contrary is shown.

(5) In this section, “electronic”, “electronic communication system” and “electronic document” have the meanings assigned to them respectively under section 2 of the *Electronic Transactions Act*.

Tax Collection Act 1. In section 2(1)—

(a) insert next after the words “In this Act” the words “, unless the context otherwise requires”; and

(b) insert the following definition in the appropriate alphabetical sequence-

“ “tax debtor” means a person who owes an amount in respect of any tax, penalty or surcharge;”.

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2. Insert the following next after section 2 as section 2A—

“Minister
may
prescribe
interest rate
for arrears
of tax.

2A.—(1) Subject to subsections (4) and (7), the Minister may by order published in the *Gazette*, subject to affirmative resolution of the House of Representatives, prescribe the interest rate payable in respect of arrears of tax for the first six months of each calendar year and the second six months of each calendar year, respectively.

(2) An order made under subsection (1) prescribing the interest rate for the first six months of a calendar year shall be published in the *Gazette* on or before January 31 of that calendar year.

(3) An order made under subsection (1) prescribing the interest rate for the second six months of a calendar year shall be published in the *Gazette* on or before July 31 of that calendar year.

(4) In the calendar year 2014, for the period commencing on October 1, 2014 until December 31, 2014 (hereinafter called the “specified period”)—

- (a) subsections (1) and (3) shall apply as if the references in those subsections to the second six months of a calendar year were references to the specified period; and
- (b) the words “September 30, 2014” shall be substituted for the words “July 31 of that calendar year” in subsection (3).

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(5) If an order is not made under subsection (1) in respect of any period of six months or for the year 2014, in respect of the specified period, the order that was in effect for the preceding period shall remain in effect until a new order comes into effect.

(6) Notwithstanding any provision of law to the contrary, an interest rate prescribed by an order made under subsection (1) shall apply in respect of arrears of tax under any enactment of Jamaica to the exclusion of any rate of interest provided for in any such enactment.

(7) This section does not apply in respect of any interest rate that is provided for in the *Assets Tax (Specified Bodies) Act*, the *Stamp Duty Act* or the *Transfer Tax Act*.”.

3. Insert the following next after section 22 as section 22A—

“Application
of
payments.

22A.—(1) If a payment is made on account of any amount owed by a tax debtor to the Commissioner General, or as the case may be, to the Commissioner of Customs, the payment shall be applied firstly to any principal that is payable, secondly to any interest that is payable, thirdly to any penalty that is payable, and finally to any surcharge that is payable.

(2) A payment under subsection (1) of an amount of interest, penalty, surcharge or principal, as the case may be, shall be applied first to the earliest of such amount that is owing.

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(3) Notwithstanding subsections (1) and (2), the Commissioner General (in the case of amounts other than duties imposed under the *Customs Act*), or the Commissioner of Customs (in the case of duties imposed under the *Customs Act*), may agree in writing, as part of a settlement with a tax debtor, that a payment made on account of any amounts owed by the tax debtor may be applied in a manner other than that required by those subsections.

(4) For the purposes of this section the word “penalty” does not include interest.”.

4. Insert the following next after section 40A as sections 40B to 40G—

“

*Further Remedies for
Enforcement of Taxes*

Garnishment.

40B.—(1)

General knows or has reasonable cause to believe that a person—

- (a) holds, controls or has custody of moneys belonging to a tax debtor; or
- (b) is, or will be within one year, liable to make a payment to a tax debtor,

the Commissioner General may in writing require the person to pay forthwith, where the moneys are immediately payable, and in any other case as and when the moneys become payable, the moneys otherwise payable to the tax debtor in whole or in part to the Commissioner General on

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account of an amount owed by the tax debtor to the Commissioner General.

(2) Where the Commissioner General has, under this section, required a person to pay to the Commissioner General, on account of an amount owed by the tax debtor, moneys otherwise payable by the person to the tax debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the requirement—

- (a) applies to all such payments to be made by the person to the tax debtor until the amount owed by the tax debtor is satisfied; and
- (b) operates to require payments to the Commissioner General, out of each such payment, of such amount as is stipulated by the Commissioner General in the requirement.

(3) The receipt of the Commissioner General for moneys paid by a person as required under this section is a good and sufficient discharge of the liability of that person to the tax debtor, to the extent of the payment.

(4) Every person who, having been required under

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subsection (1) to pay moneys to the
Commissioner General—

- (a) fails to pay to the
Commissioner General all
or any part of such
moneys (in this
subsection referred to as
the “unpaid amount”); or
- (b) pays all or any part of
such moneys to any
person other than the
Commissioner General
(in this subsection
referred to as “the
diverted amount”),

shall remain liable to pay to the
Commissioner General a sum that is
equal to the unpaid amount or the
diverted amount, as the case may
be, and the Commissioner General
shall be entitled to recover that sum
from the first-mentioned person as
a civil debt owing to the
Commissioner General.

(5) Where a person carries
on business under a duly authorized
name or style other than the person’s
own name, notification to the
person of a requirement under this
section may be addressed to the
name or style under which the
person carries on business and, in
the case of personal service, in
addition to any other lawful means
of service, shall be deemed to be
validly served if it is left with an
adult person employed at the place
of business of the addressee.

(6) Where persons carry on
business in partnership, notification

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to the persons of a requirement under this section may be addressed to the partnership name and, in the case of personal service, in addition to any other lawful means of service, shall be deemed to be validly served if it is served on one of the partners or left with an adult person employed at the place of business of the partnership.

(7) The provisions of this section, except subsection (4), apply to the Government of Jamaica in respect of—

- (a) any moneys belonging to a tax debtor that the Government holds, controls or has custody of; and
- (b) any payment that the Government is, or will be within one year, liable to pay to a tax debtor.

Lien.

40C.—(1) The Commissioner General may issue a certificate (in this section referred to as a “certificate”) certifying the amount owed by a tax debtor to the Commissioner General that has not been paid, or any part of an amount of tax owed by a tax debtor that has not been paid, as an amount payable by the tax debtor.

(2) The Commissioner General may make an application to the Supreme Court (in this section referred to as the “Court”) for an order to have registered in the Court a certificate that has been issued under subsection (1).

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(3) An application under subsection (2) shall be made in accordance with rules of court and shall be heard by a single Judge in Chambers.

(4) A Judge shall make an order for registration of a certificate in the Court if the Judge is satisfied that—

- (a) the Commissioner General is not restricted by section 40D from taking action under this section in respect of the amount owed by the tax debtor or any part thereof, as certified in the certificate; and
- (b) there are reasonable grounds for making the order and it would not in the circumstances be unjust to do so.

(5) A certificate when registered pursuant to an order made under subsection (4) has the same effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the Court against the tax debtor for a debt in the amount certified, and the rules of the Court, including those providing for accrual of interest, shall apply accordingly.

(6) For greater certainty, for the purpose of any proceedings under this section—

- (a) the rules of the Court relating to judgment debts apply; and

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- (b) the Commissioner General shall be deemed to be a judgment creditor under those rules.

(7) All reasonable costs and charges incurred or paid in respect of the registration in the Court of a certificate, or in respect of any proceedings taken to collect the amount certified, are recoverable in like manner as if they had been included in the amount certified in the certificate when it was registered.

(8) For the purpose of creating a charge, lien or priority on property (whether real or personal), or any interest or right in such property, belonging to the tax debtor, a certificate may be filed, registered or otherwise recorded in any registry system, including—

- (a) the Register Book of Titles under the *Registration of Titles Act*;
- (b) the Security Interests Registry under the *Security Interests in Personal Property Act*; and
- (c) the Records Office under the *Record Office Act*,

in the same manner as a document evidencing a judgment of the Court against a person for a debt owing by that person, or a writ of execution in respect of that debt, may be filed,

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registered or otherwise recorded in such registry system.

(9) If a certificate has been filed, registered or otherwise recorded in a registry system under subsection (8) in respect of any property, or interest or right in such property, belonging to a tax debtor, a charge, lien or priority is created on that property, interest or right, in the same manner and to the same extent as if the certificate were a document evidencing a judgment of the Court against a person for a debt owing by that person or a writ of execution in respect of that debt.

(10) A charge, lien or priority created under subsection (9) by the filing, registration or other recording of a certificate shall be subordinate to any charge, lien or priority in respect of which all steps necessary to make it effective against other creditors were taken before the time the certificate was filed, registered or otherwise recorded.

(11) If a certificate is filed, registered or otherwise recorded under subsection (8), proceedings may be taken in respect of the certificate, including proceedings—

- (a) to enforce payment of the amount evidenced by the certificate, interest on the amount and all costs and charges paid

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or incurred in respect
of-

- (i) the filing, registration or other recording of the certificate, and
 - (ii) proceedings taken to collect the amount;
- (b) to sell or otherwise dispose of any property, or interest or right in such property, belonging to a tax debtor and to effect the transfer of title to such property, interest or right in furtherance of a sale or disposition of the property, interest or right;
- (c) to renew or otherwise prolong the effectiveness of the filing, registration or other recording of the certificate;
- (d) to cancel or withdraw the certificate wholly or in respect of any of the property, or interest or right, affected by the certificate; or
- (e) to postpone the effectiveness of the filing, registration or other recording of the certificate in favour of

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any right, charge, lien or priority that has been or is intended to be filed, registered or otherwise recorded in respect of any property, or interest or right, affected by the certificate,

in the same manner and to the same extent as if the certificate were a document evidencing a judgment against a person for a debt owing by that person or a writ of execution in respect of that debt.

(12) If a certificate is presented to an official in a registry system referred to in subsection (8) for filing, registration or other recording under that subsection, or a document relating to the certificate is presented to such official for filing, registration or other recording for the purpose of any proceeding described in subsection (11), it shall be accepted for filing, registration or other recording in the same manner and to the same extent as if the certificate or document relating to the certificate were a document evidencing a judgment against a person for a debt owing by that person or a writ of execution in respect of that debt.

(13) If access is sought to any person, place or thing to make a filing, registration or other recording referred to in subsection (12), access shall be granted in the same manner and to the same extent

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Limitations
on action
under
sections 40B
and 40C.

as if the certificate or document relating to the certificate were a document evidencing a judgment against a person for a debt owing by that person or a writ of execution in respect of that debt.

40D.—(1) ~~The Commissioner General~~ may not take any action under section 40B or 40C in respect to an amount owed by a tax debtor unless-

- (a) the tax debtor has acknowledged in writing the amount owed, including by way of filing a return of tax, and has not paid the amount;
- (b) the time for making any objection or appeal in respect of the amount owed has expired, and the amount has not been paid;
- (c) in the event of an objection or appeal in respect of the amount owed, the objection or appeal has been finally determined in accordance with the enactment under which the tax was imposed, and the amount has not been paid; or
- (d) the amount owed has been finally determined by a court, otherwise than pursuant to an objection or appeal referred to in paragraph (c), and the amount has not been paid.

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(2) The amounts in respect of which action may be taken by the Commissioner General under section 40B or 40C shall not include any amounts, as determined by the Commissioner General, that are payable to the tax debtor by the Commissioner General.

(3) This section does not apply with respect t-

- (a) any amount that is required to be deducted or withheld, and required to be remitted or paid, under any enactment; or
- (b) any penalty or interest payable in respect of an amount referred to in paragraph (a).

Recovery by deduction or set-off.

40E.—(1) Where an amount owed by a tax debtor has not been paid, the Commissioner General may require the retention by way of deduction or set-off of such amount as the Commissioner General may specify out of any amount that may be or become payable to the tax debtor by the Government of Jamaica, and the Commissioner General may require that the amount deducted or set-off be paid to the Commissioner General to be applied in reduction of the amount owed by the tax debtor to the Commissioner General.

(2) The amount that may be deducted or set-off under subsection (1) shall not include any amounts, as

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	determined by the Commissioner General, that are payable to the tax debtor by the Commissioner General.
Sections 40B, 40C and 40E without prejudice to other remedies.	40F. The provisions of sections 40B, 40C and 40E are without prejudice to any other provisions of this Act or any other enactment for recovery of tax owed by a tax debtor.
Publication of list of tax debtors.	40G.—(1) For the purposes of this section- “certificate” means a certificate of the Commissioner General under section 40C(1); “publish” means to make public by publishing- (a) in the <i>Gazette</i> or in any daily newspaper in nationwide circulation in Jamaica; (b) by means of broadcast media or any other form of mass media; or (c) on a website of the Government of Jamaica or Tax Administration Jamaica; “list” means the list of tax debtors that is published un-

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der subsection (2) or a revised list that is published under subsection (4), as the case may be.

(2) Notwithstanding any other provision of law and subject to the provisions of this section, the Commissioner General may publish a list of tax debtors in respect of whom certificates have been registered in the Supreme Court under section 40C(5).

(3) The list shall contain the following information in respect of each tax debtor in respect of whom a certificate has been registered—

- (a) the amount owed;
- (b) the name of the tax debtor; and
- (c) the type of tax that is comprised in the amount owed.

(4) The Commissioner General shall periodically publish a revised list to update information that is contained in the immediate preceding published list.

(5) Subject to subsection (6), the Commissioner General shall remove the name of, and other information relating to, a tax debtor from a list-

- (a) if the amount owed by the tax debtor has been paid in full;
- (b) an agreement or arrangement for payment has been made to the satisfaction of the Commis-

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sioner General for payment of the amount owed; or

- (c) a settlement with regard to the amount owed has been reached to the satisfaction of the Commissioner General.

(6) If a tax debtor, whose name and other information was removed from a list, is in breach of an agreement or arrangement referred to in subsection (5)(b), the Commissioner General may add the tax debtor to a subsequent revised list, without having to register a certificate in the Supreme Court.”.

5. Insert next after section 47A the following as section 47B—

“Write-off of uncollectable customs duty.

47B. Section 47A applies *mutatis mutandis* in respect of the write-off of any sum that is recoverable by the Commissioner of Customs under the *Customs Act* by way of customs duty, interest, penalty, arrears or costs.”.

Passed in the House of Representatives this 23rd day of July, 2014 with two (2) amendments.

LLOYD B. SMITH
Speaker.

Passed in the Senate this 30th day of July, 2014 with seventeen (17) amendments.

FLOYD E. MORRIS
President.

On the 17th day of September, 2014 the House of Representatives agreed to the amendments made by the Senate.

LLOYD B. SMITH
Deputy Speaker.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

(sgd.) *H. E. Cooke (Mrs.)*
Clerk to the Houses of Parliament.

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