Speaker 1 (00:00):

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Morgan Scarboro (00:15):

People make and businesses make decisions on where they locate for a whole host of different reasons, but tax is certainly one of them and taxes matter at the margin.

Nikki Dobay (<u>00:28</u>):

Hello and welcome to Gettin' Salty, a state and local tax policy podcast hosted by Greenberg Traurig. My name is Nikki Dobay, shareholder in the Sacramento, California and Portland, Oregon offices.

(00:40):

Super excited today to be joined by a good friend, Morgan Scarboro. Morgan is the Vice President of Tax Policy at MultiState Associates and a regular on the podcast. And today Morgan and I are going to be catching up on all things 2023 in state and local tax that is, and talking about 2024.

(01:01):

Morgan, thank you so much for being here today.

Morgan Scarboro (01:03):

Thank you for joining me, Nikki. And before we start, I have something very serious to tell you.

Nikki Dobay (01:07):

Okay.

Morgan Scarboro (01:09):

You may or may not know that the Spotify Wrapped recaps came out this week. And what that is Spotify telling everybody what their top artists were, what their top podcasts were. And there's been a discrepancy. They've had an error because my husband and my friends assured me that they're listening to every episode of Gettin' Salty and all of them with me. And yet I didn't see it appear on one Spotify Wrap. So I think you need to reach out to those folks and let them know that there's been some sort of oversight.

Nikki Dobay (01:38):

All right, because I know when you are on the show we reach hundreds of thousands of people.

Morgan Scarboro (01:45):

Millions.

Nikki Dobay (01:46):

It's just incredible. And you were recently out of the country and we're going to be talking about that later, and I can't imagine the impact that's had on the Gettin' Salty ratings once folks know you're on this. We were just talking with our producer and he was name-dropping and I think he dropped yours

and my name in trying to get some things done around the house. So just really thanks for pointing out how powerful this podcast is.

Morgan Scarboro (02:14):

Top of the lists next year, top of Spotify Wrap Gettin' Salty I bet. Everyone send it to me. I'm ready to review them.

Nikki Dobay (<u>02:20</u>):

All right. All right. Well, thank you for getting that very serious topic out of the way.

Morgan Scarboro (02:25):

Always.

Nikki Dobay (<u>02:25</u>):

I can't say thank you enough.

(02:28):

So Morgan, we've been doing this a couple years now. You come and we chat about how things have been in the state and local tax space. And I think you and I were at a conference together recently and you might've said we were starting to sound like broken records when it comes to kind of how things have been really since 2021 or so. So we may be sounding like broken records, let's just put that out there now. But tell me about 2023 and your reflections on 2023 in the state and local tax world.

Morgan Scarboro (03:08):

Yes. So I would like to retract my comments because I have something new to say this year. What that is, I really kind of thought when I was recapping in my mind what all happened in 2023, I mean, honestly at first I kind of thought this year was kind of a snooze for tax policy. But what actually happened I think, is that I blocked out many, many things that happened in a very quick time period that was very busy because actually what we saw, we saw a number of states make significant changes. We saw a couple states do fairly comprehensive overhauls this year, but we saw a lot of states make not minor or not just technical changes. They went a little bit further than that this year.

(03:49):

So a couple of examples of, we could talk about the biggest actions first. What I would consider the biggest states to do things on tax policy this year, I think Connecticut, you could throw that in there. Their omnibus tax bill, they extended their corporate surcharge. They levied a new elective tax for pass throughs and then created a new rate for high income individuals. So I think that was really significant.

(04:16):

I think folks in Massachusetts would argue that their tax bill was a big one where they implemented single sales factor, they raised the estate tax exemption, they reduced the rate on short-term capital gains. And I'm just sort of picking out highlights here. These states did other things other than what I'm talking about.

(<u>04:32</u>):

In my mind though, Minnesota and New Jersey sort of compete for the two biggest bills or omnibus bills this year. Minnesota's was a fascinating fight to watch. You started out by seeing them introducing mandatory worldwide combined reporting. That got altered. What they actually did instead was

included a significant portion of GILTI in the taxpayer's base. They did a new tax on net investment income. They reduced the cap for NOLs. They levied a tax on delivery fees. That was in a separate bill, but I think that that is worth talking about.

Nikki Dobay (<u>05:05</u>):

Definitely.

Morgan Scarboro (05:07):

And then New Jersey I think was also a really interesting process to watch because the way that New Jersey unfolded. New Jersey had this really what I think was really incredible collaboration between the department and stakeholders in the state where they were working together to see how can we improve? At the bottom line, how can we improve administration? We're not going into this saying, this is going to be a huge revenue raise or this is going to be a big revenue cut. It's how can we simplify and streamline our system in a way that makes it less difficult to comply?

(05:42):

And they really made some good changes there. They moved to start treating GILTI dividend income, they change the net deferred deduction, it's things like that. And then in a separate bill, I think this is just worth noting because it's like Bravo network style petty things, they created a retaliatory convenience of the employer role.

(<u>06:02</u>):

So those are my states that I think about. I actually did some pretty big stuff and I have others that weren't quite as comprehensive, but I mean four states to talk about is doing pretty big packages, I was wrong. That's not a snitch. There was activity happening.

Nikki Dobay (<u>06:18</u>):

Well, I think and maybe can both retract our statements because in some ways I think maybe this is a new normal. And I think there was a period of time leading up to the pandemic really, and then how crazy everything was during 2020, 2021 where there was a lot of fear about anytime there was any sort of revenue instability that the state was going to go after the business community and find ways to raise revenue. So that I feel was always what we were very concerned about and spending a lot of time making sure we weren't missing something or posing those types of proposals.

(06:58):

But to your point, the states have continued to have substantial revenue, and we'll talk about a revenue outlook for 2024, but 2023, the state still had a lot of money for the most part. And so what we're really seeing the states do is they are making significant changes, but they're just, I think we maybe have a little PTSD, they're just not as scary as we're used to.

(07:23)

And then you layer on top all the states cutting rates in various ways and trying to give the money back to their residents and businesses in some ways. And that kind of probably makes us even more nervous.

(07:37):

But then we do see the states really starting to take a look at administrative issues and ways to not only help taxpayers, but I think also streamline some of their own processes. 'Cause I think some of the things New Jersey did is helpful for the State Department as well. And we're starting to see that in other states. Oregon for example, had a bill that would've increased the threshold for the corporate ...

PART 1 OF 4 ENDS [00:08:04]

Nikki Dobay (<u>08:03</u>):

That would've increased the threshold for the corporate activity tax. Ohio passed a significant bill increasing their threshold for their commercial activity tax. So you're seeing states starting to take a look at things that they can do that will get a lot of taxpayers maybe off the tax roll that weren't really bringing in that much money. So maybe I think we're just in maybe a little bit of a new normal.

Morgan Scarboro (08:25):

I totally agree. I think the New Jersey example of how that played out this year is really instructive for states and taxpayers and stakeholders in states who want to see change. I mean, you're looking at a state that's a pretty reliably blue state who doesn't have a reputation is cutting taxes all the time by any stretch. In fact, it's really the opposite. But really working together and really listening and hearing each other and having a really thoughtful process to figure out what's a reasonable place to end up where everybody has made some sort of compromise there and actually ending up with a really fantastic, I think for most people, a pretty good compromise. So I think that's really helpful. One other thing I think is worth mentioning is some states that tried to do significant changes and that ultimately failed. So I of course, always think about Maryland and combined reporting.

(09:20):

I mean, if you were trying to pass combined reporting in Maryland, it'd be harder than way and frogs. I mean, that is a tough battle I think in Maryland. I expect that we'll see it come back. New Mexico was also very dramatic. They passed a pretty large omnibus tax bill that included a number of business changes including single sales factor apportionment, and the governor somewhat contentiously line item vetoed many, many, many of those items out to where all you really had remaining were a couple of individual changes. So I think that there was certainly tension there, probably between the legislature and the governor. And then of course, on your side of the country, Washington discussions and moving to something like a margin style tax. I mean, that is a continuing conversation.

Nikki Dobay (10:06):

Yeah, yeah. Let's stop on Washington for a minute. Because that was a very interesting one to watch. Washington had put in place, I think it's going back about five years, this tax structure work group where legislators and members of the governor's office and Department of Revenue, we're talking about Washington's tax structure and the B&O tax is... We will just say very politely, not a very well like tax, and all the messages they were receiving was that the B&O tax should go away. Well, I think this is an example of trading one bad idea for another because while the B&O tax is really bad, the Texas style margins tax, especially when you start tweaking it, so you make it totally different and unique. Not a much better answer, especially when you couple that with over 3% being the rate. So that kind of went down in flames.

(<u>11:05</u>):

You and I have recently been though working on a proposal, which has been kicked off and we're very excited about and we hope addresses some of the issues that were raised in this tax structure work group, which deal with the taxation of intercompany receipts. And so we'll be working on a B&O consolidated election proposal. There is a pay for, so don't get too excited, but definitely reach out to Morgan or I, if you are interested in getting involved. So Morgan, I think we should go back to Minnesota. Because I think that's to your point, this is one where... It's hard to say if this is the biggest issue of the year, but there was a lot of drama and where Minnesota ended up, it's pretty disappointing

even though they did shoot down mandatory worldwide combined reporting. So kind of give your perspective of how that fight went down.

Morgan Scarboro (12:03):

Yeah, it was really interesting in that there were many different ideas and I think different levels of readiness between the two chambers and what they were willing and what they were sort of interested in doing. But everybody, I think was on the same page that they were going to do something. What I think is really interesting about the Minnesota bill, which really is a big revenue raiser for the state. I mean, they weren't looking to make tax cuts certainly by any stretch in this bill, is that Minnesota is still in a really, really, really strong revenue position. Last I heard, they don't update their estimated ending balance all that often, but last I heard, which was earlier this year, they were still slated to have over a billion dollar ending balance in their general fund. That's not including their very large rainy day fund that's very well-funded.

(<u>12:57</u>):

So I think that that sort of leads into where I'm watching next year, which is these blue states and also often progressive Democrats in blue states that are considering tax changes for the principle of it, right? Because they think that raising revenue is the right thing to do because it is a campaign talking point to increase taxes on the business community and high income individuals, not because they need the money, right? It will be exacerbated in some states by the fact that they might need the money. If we look at states like California, New York, Illinois, the way that they're headed right now from what they're reporting is, is that they're going to be facing deficits if not in fiscal year '24 in the out years, right? So fiscal year '25, '26 coming up pretty quickly. So when you have that combination of believing in raising revenue because you believe that it's the equitable thing to do, combined with actually now looking at a potential budget deficit for the first time in what five years? That's a little bit of a dangerous game.

Nikki Dobay (14:08):

Yeah, yeah. What I've seen, especially out here on the West Coast, because I think there's been a long-standing view that we really need to be thinking about how to make sure that these large corporations are paying their fair share or high income individuals are paying their fair share. And I'm using air quotes for those of you listening, is it's led to some significant backlash and challenges. I'll use Oregon as an example. Portland in particular. Portland has the second-highest individual income tax rate in the country, only second to New York, and we're only off by maybe a half a percent from New York City. But the highest rate kicks in at \$125,000 compared to \$25,000 in New York City. And what that's led to is people leaving the city, and I was just in Boise at a tax conference and Idaho's going gangbusters. I mean, they have one of the lowest unemployment rates, the highest percentages of folks moving there and growth. And you really just see the flip side of tax policy playing out. And so to your point about this being a dangerous game, Minnesota's desire to raise taxes on these various taxpayers could have implications down the road. And I think the important thing is for folks like you and I and other people that speak in the space to really highlight what the implications of those policies are.

Morgan Scarboro (15:49):

Yeah, I mean, Nikki, I think I know somebody who left Portland. Am I going to get in trouble for saying that?

Nikki Dobay (15:55):

Oh, no, it's been well-documented that I've left Portland, so don't worry.

Morgan Scarboro (16:03): A real life example. Here we go... PART 2 OF 4 ENDS [00:16:04] Nikki Dobay (16:04): Don't worry. Morgan Scarboro (16:04): A real life example. Here we go. Nikki Dobay (16:04): Yes, yes. And I have other folks that I hear that are like, no, people in these types of jurisdictions want to pay more tax and want to, but then we flip over to the services side and that's a different conversation and not a place where you and I necessarily live all that much, but the spending piece is always an important part of the holistic conversation. Morgan Scarboro (16:27): I totally agree. And one thing I think that's important to highlight in this conversation is, I don't think either of us think that taxes are the only reason that people make these decisions, right? Nikki Dobay (16:36): Correct. Morgan Scarboro (16:36): People make and businesses make decisions on where they locate for a whole host of different reasons, but tax is certainly one of them, and taxes matter at the margin. So, I think an understanding of that, that we're not sitting up here saying, oh, well if you have this rate, everybody's going to come and everyone's going to want to live there. That's not what either of us think. But we do think that, and sorry Nikki, I don't want to speak for you if this is wrong, so please tell me if you don't agree, but that it is a consideration for people in the business community. So one that I think policymakers ought to keep in mind. Nikki Dobay (17:13): Yeah. And I think I would echo that and add, businesses often are more than happy to pay and want to pay the right amount of tax, but there's also just issues of fairness and then efficiencies and to these changes like, say New Jersey's making just ways to make things more administrable so that they can actually comply while also running a business and creating income, which the state can then tax. So there's a lot of things to balance. So we've gone down a real philosophical medical-Morgan Scarboro (17:51): How do we get here?

Nikki Dobay (17:52):

I know, I know. Let's shift away from here. Okay, so 2023, some stuff happened. And then the other thing that where maybe we are, we might been on a little bit of repeat over the few years is, when it comes to revenues and the states 2020 things fell off, we went over the cliff, and then end of 2020 into 2021, they had all the money in the world because a lot to do with the federal government funding. And then we kept saying, oh, things can't keep going up forever, things can't keep going up forever, the sky could fall. I just finished an article where I kind of came to the conclusion the sky hasn't fallen. I'm not sure it's going to fall. Now they're downgrading the recession to a soft landing. Yes, the states you pointed out are going to have some challenges, but where are we going to be revenue wise in 2024? Is the sky going to fall?

Morgan Scarboro (18:53):

No, I'm not going to be chicken little, I don't think the sky is going to be falling next year. I do think we will be in a slightly different environment. I think states will be strong on the fiscal side, but they're not going to be rolling in it like they have for the past couple years. One thing that makes that a little bit easier for states is that they have put an unprecedented amount of money into their rainy day or their savings funds. So if something were to happen, they have a really good security blanket basically there. So the states that I highlighted, what we did at multi-state is we went through every state's most recent revenue reporting and did a state by state look what they're predicting for fiscal year 24. And we tried to categorize these in terms of whether it was a positive outlook, conditional or challenging.

(<u>19:46</u>):

One thing that's really hard about making this categorization is revenue stuff is really bizarre right now. And I think I've talked about this before, but how do you characterize a revenue picture where they expect revenue might fall by 5%, but they're still going to be in a small surplus at the end of the year. What do you call that? And that's really what we're starting to see is the rate of growth is slowing in states, but they're still in a good spot. So those that are challenging I don't think are a surprise to anybody. California, New York, Illinois, maybe to some extent, but those aren't really surprises. I want to just run down the list of states that we have marked as conditional though, because I think that might be a little bit more interesting to people, because it's not all the usual suspects. So these are states where maybe their budget chair or their fiscal director, whoever is talking about this, has come out and said, hey, under this current plan, we're going to run a very small deficit. Or it depends on if this or this happens. So I'm not saying, oh, these states are going to be in trouble, but just these are states I'm keeping a little bit closer eye on the fiscal picture. So I have Alaska, Arizona, Hawaii, Illinois though I lean a little bit more toward that being challenging. Maryland, Massachusetts, Jersey, again, Jersey, probably more challenging, especially in the out years. And then Rhode Island. So, not states that you would typically think of for that, but just ones that you might want to monitor what they're saying in their revenue reports.

Nikki Dobay (21:14):

Got it. Okay. And so, are there big items that you have on your list of things you're watching? I mean, from my perspective, California makes me the most nervous just because we do know they are going to have revenue challenges. There's going to be a lot of ballot initiative fighting going on in 2024, which could have some significant implications, I think more on the local side, but potentially on how the state itself could raise revenue. So I get a little worried that the legislature might try to do something before those ballot initiatives are voted on and get something potentially locked in. And there were some pretty scary bills introduced this year, which would significantly raise the corporate rate. And they've looked at some other proposals, taxes on services, sales tax on services, and somebody has said out loud

that a digital advertising tax could be a good idea. We've seen, there's no legislation or proposals at this point, but California is probably for me, the one I... If anything's keeping me up at night, the state and local tax where California's that for me.

Morgan Scarboro (22:31):

I agree. One thing I think though that's interesting in California to watch is they have had some change very recently in their fiscal leadership and committees. So, that could mean that there's more of a moderating. I mean, obviously your leaders and your fiscal committees in California are going to be Democrats, there's no denying that. But new leadership combined with a governor who was on a debate last night, who clearly has higher aspirations, I don't think he would probably want to do a big tax increase. And then my colleague, Ryan Manus did really interesting research a couple of years ago, that shows that tax volatility in an election year is much, much lower. And that's legislative volatility, not just what's happening with revenue. It's actually tax revenue volatility falls by over 50% in election year. So that is something that I think is a little bit of a slowing force in some of these states that might be a little bit concerning.

Nikki Dobay (23:30):

Well, and thank you for mentioning that, because I think that is a great point and will help me sleep better.

Morgan Scarboro (23:37):

Oh, good. I'm glad I could do that for you.

Nikki Dobay (23:39):

So I feel like this next year is going to be like this for us. We're going to be crazy busy because these states are going to be introducing, what I will characterize is a lot of wacky proposals, and we're going to have to work with our clients and companies that will potentially be impacted by all these things. So we will be very busy on this front, but at the end of the day...

PART 3 OF 4 ENDS [00:24:04]

Nikki Dobay (24:03):

We will be very busy on this front, but at the end of the day, probably nothing too crazy. We'll make it across the finish line and maybe we'll even see the states continuing to have conversations and do some good things on the administrative side. That's my crystal ball-

Morgan Scarboro (24:19):

We're going to clip that, and then when Pennsylvania and Maryland pass combined reporting and then like eight states do a new tax on data collection, we're going to play it at the beginning of the podcast.

Nikki Dobay (24:32):

All right, all right. We could play these next year when we're doing this again.

Morgan Scarboro (24:35):

I'm just kidding. I agree with you for the most part, the only thing I would watch is those policies like a tax on data collection that actually seem to be something that legislators or candidates want to campaign on. You have folks on both sides of the aisle who were talking about why they think this is a good idea, even though I think everybody who works in the policy space is saying, "Please don't do this. It's actually really difficult and there are a lot of challenges-

Nikki Dobay (25:04):

It's a horrible idea.

Morgan Scarboro (25:04):

... for it and there's a lot of..." Look at Maryland, like what they tried to do. It's not just, "Oh yeah, we're just going to do this," and then it sort of goes into the books. So those are the types of things, those messaging type of legislation that I think we could see, you can see more of in an election year, even if overall bills and enactments are down in an election year.

Nikki Dobay (25:26):

All right, well we've got our work cut out for us to get the message out about why administration matters and that these types of proposal are just fraught with issues on that side.

Morgan Scarboro (25:40):

Absolutely, and I would just because you are not going to brag on yourself on this podcast, so I would just say Nikki was on a fantastic panel at the Institute for State Policy Leaders talking about tax administration issues recently. Really an expert in this area. So if folks are interested in learning more about what they can do with their state, I think you're a great contact to start with for some of those changes.

Nikki Dobay (26:01):

Wow. Morgan, how much do I owe you? No, that was unsoclicited.

Morgan Scarboro (26:04):

Are you going to Venmo me now or later?

Nikki Dobay (<u>26:07</u>):

We'll just provide your Venmo information on the podcast and we'll get that up, take good care-

Morgan Scarboro (26:13):

Perfect. Can we get a link in there for easy access, that's in the description.

Nikki Dobay (26:15):

That's right. That's right. We're taking sponsorships now, folks. No, just kidding. Just kidding. For syndication, because I'm sure that's coming.

Morgan Scarboro (26:24):

Yes.

Nikki Dobay (26:25):

Well, Morgan, thank you so much for a wonderful conversation. I know we'll be doing this again in 2024 and if we need to play some of these clips back to show people how right we were. We're not going to play-

Morgan Scarboro (26:36):

Of course.

Nikki Dobay (26:37):

... them if we messed it all up. But, okay, so surprise tax question. I've been noodling on this one and I kind of was going to go with Morgan was recently on vacation and talk about that. But then I kind of came up with something that I thought would be more fun, and I do think it plays in a little bit to your recent vacation.

Morgan Scarboro (26:57):

Okay.

Nikki Dobay (26:57):

Would you go on the show, because you are a celebrity, I'm a Celebrity... Get Me Out of Here! where I don't really know much about this show, but apparently they send celebrities into some jungle survival situation. And so really the question is, would you willingly do that, go into some survival situation where you then have to... Again, I'm not really quite sure what the purpose of the show is. Is it work together? Is it... But I think I'm at a point in my life where I don't need to go into some situation to prove that I can survive without a bed and a shower and things like that. So I don't know, where are you at on this spectrum?

Morgan Scarboro (27:42):

Okay, so first I have not heard of this show and I desperately want to watch it now because I love trashy television, if you know me. So that sounds right up my alley.

Nikki Dobay (27:50):

Okay.

Morgan Scarboro (27:51):

I want to say yes because I used to be, have you ever seen the show Naked and Afraid, which is-

Nikki Dobay (27:57):

Yes, yes.

Morgan Scarboro (27:57):

... a fascinating concept. I made all my friends one time take the PSR quiz to rate our survival rankings. I was really into it at one point, but the answer is no, because I don't really like to be uncomfortable in any way at all.

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Nikki Dobay (28:13):
Well, can I ask-
Morgan Scarboro (28:14):
And particularly with people watching you be uncomfortable. So the reality is probably not,
Nikki Dobay (28:21):
But you're definitely down to watch other people in those situations.
Morgan Scarboro (28:25):
Oh, that's the beauty of reality television is watching people be uncomfortable and you're not impacted
by it. That's a wonderful thing in our society.
Nikki Dobay (28:33):
And what was your score on that test?
Morgan Scarboro (28:35):
Oh, it was bad. It was below five. It was actually like, "Don't go outside."
Nikki Dobay (28:40):
So that could be another reason why you wouldn't go on this show.
Morgan Scarboro (28:44):
So I'll tell you really fast one anecdote from when we were in Costa Rica/ I was outside and there was
this beautiful fountain situation and I'm looking and I'm like, "Oh my God, look at these really cute little
frogs in this fountain just jumping around," and I'm getting really close. I'm taking this videos and photos
for my Instagram followers. I'm getting the content of these cute frogs. And then I go around and I sit
back down and I'm like, "Oh, let me Google and see what those were." And it was like poison dart frogs.
And three minutes ago it was like four inches from their face trying to take a photo and video of these
frogs. So I have a desk job, Nikki, for a reason.
Nikki Dobay (29:23):
You work in an office. Well-
Morgan Scarboro (29:25):
Yes.
Nikki Dobay (29:25):
... my funny one was I was with Fred Nicely and we were hiking in Arizona and I was like, "Oh, look at
these cute little cactuses." And I was pointing at them and they just jumped up and attached itself to my
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finger. And then I've got Fred Nicely trying to extract this crazy cactus thing from my hand. And he first

started by trying to hit it with an umbrella, which I was like, "Fred!"

Morgan Scarboro (29:56):

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Yeah, but what are you going to... If it were me, I would've had to call 911 because I wouldn't have touched it Nikki, I'm sorry to say.

Nikki Dobay (<u>30:04</u>):

Well we did get it off my hand and then when we went back to the hotel they were like, "Oh yeah, those are super dangerous cactuses, why were you off the trail?" So yeah, I don't trust myself in these situations either.

Morgan Scarboro (30:16):

So you and I are a no, are survivalists.

Nikki Dobay (30:19):

All right, so we're not going on I'm a Celebrity... Get Me Out of Here! despite are-

Morgan Scarboro (30:22):

We're not taking this podcast global. No.

Nikki Dobay (30:26):

Well speak for yourself on that, but all right, well Morgan, thank you again so much for the conversation and thank you for the listeners for joining us today. Contact information for Morgan and I will be in the show notes as well as I'm sure one of these amazing reports that MultiState has recently put out. And please join us again in a few weeks on GeTtin' SALTy.

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