
HOUSE BILL 2500

State of Washington 58th Legislature 2004 Regular Session

By Representative McIntire; by request of Department of Revenue

Read first time 01/15/2004. Referred to Committee on Finance.

1 AN ACT Relating to conforming Washington's tax structure to
2 portions of the streamlined sales and use tax agreement not implemented
3 by chapter 168, Laws of 2003; amending RCW 82.32.020 and 82.32.030;
4 amending 2003 c 168 s 902 (uncodified); reenacting and amending RCW
5 82.14.020; adding new sections to chapter 82.32 RCW; adding a new
6 section to chapter 82.14 RCW; adding a new section to chapter 82.08
7 RCW; adding a new section to chapter 82.12 RCW; creating a new section;
8 providing effective dates; and providing contingent effective dates.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

10 **PART I. DEFINITIONS**

11 **Sec. 101.** RCW 82.32.020 and 2003 1st sp.s. c 13 s 16 are each
12 amended to read as follows:

13 For the purposes of this chapter:

14 (1) The meaning attributed in chapters 82.01 through 82.27 RCW to
15 the words and phrases "tax year," "taxable year," "person," "company,"
16 "gross proceeds of sales," "gross income of the business," "business,"
17 "engaging in business," "successor," "gross operating revenue," "gross

1 income," "taxpayer," "retail sale," and "value of products" shall apply
2 equally to the provisions of this chapter.

3 (2) Unless the context requires otherwise, "agreement" means the
4 streamlined sales and use tax agreement.

5 (3) "Certified automated system" means software certified under the
6 agreement to calculate the tax imposed by each jurisdiction on a
7 transaction, determine the amount of tax to remit to the appropriate
8 state, and maintain a record of the transaction.

9 (4) "Certified service provider" means an agent certified under the
10 agreement to perform all of the seller's sales and use tax functions,
11 other than the seller's obligation to remit tax on its own purchases.

12 (5)(a) "Member state" means a state that:

13 (i) Has petitioned for membership in the agreement and submitted a
14 certificate of compliance; and

15 (ii) Prior to the effective date of the agreement, has been found
16 to be in substantial compliance with the requirements of the agreement
17 by an affirmative vote of three-fourths of the other petitioning
18 states; or

19 (iii) After the effective date of the agreement, has been found to
20 be in compliance with the agreement by a three-fourths vote of the
21 entire governing board of the agreement.

22 (b) Membership under (a)(ii) of this subsection is effective on the
23 first day of a calendar quarter at least sixty days after at least ten
24 states comprising at least twenty percent of the total population, as
25 determined by the 2000 federal census, of all states imposing a state
26 sales tax have petitioned for membership and have been found in
27 compliance with the agreement.

28 (c) Membership under (a)(iii) of this subsection is effective on
29 the state's proposed date of entry.

30 (6) "Model 1 seller" means a seller that has selected a certified
31 service provider as its agent to perform all the seller's sales and use
32 tax functions, other than the seller's obligation to remit tax on its
33 own purchases.

34 (7) "Model 2 seller" means a seller that has selected a certified
35 automated system to perform part of its sales and use tax functions,
36 but retains responsibility for remitting the tax.

37 (8) "Model 3 seller" means a seller that has sales in at least five
38 member states, has total annual sales revenue of at least five hundred

1 million dollars, has a proprietary system that calculates the amount of
2 tax due each jurisdiction, and has entered into a performance agreement
3 with the member states that establishes a tax performance standard for
4 the seller. As used in this subsection, a seller includes an
5 affiliated group of sellers using the same proprietary system.

6 (9) "Source" means the location in which the sale or use, of
7 tangible personal property or a service, subject to tax under chapter
8 82.08, 82.12, 82.14, or 82.14B RCW, is deemed to occur.

9 **PART II. REGISTRATION**

10 NEW SECTION. Sec. 201. A new section is added to chapter 82.32
11 RCW to read as follows:

12 (1) A seller, by written agreement, may appoint a person to
13 represent the seller as its agent. The seller's agent has authority to
14 register the seller with the state. An agent may also be a certified
15 service provider, with authority to perform all the seller's sales and
16 use tax functions, except that the seller remains responsible for
17 remitting the tax on its own purchases.

18 (2) The seller or its agent must provide the state with a copy of
19 the written agreement upon request.

20 **Sec. 202.** RCW 82.32.030 and 1996 c 111 s 2 are each amended to
21 read as follows:

22 (1) Except as provided in subsections (2) and (3) of this section,
23 if any person engages in any business or performs any act upon which a
24 tax is imposed by the preceding chapters, he or she shall, under such
25 rules as the department of revenue shall prescribe, apply for and
26 obtain from the department a registration certificate. Such
27 registration certificate shall be personal and nontransferable and
28 shall be valid as long as the taxpayer continues in business and pays
29 the tax accrued to the state. In case business is transacted at two or
30 more separate places by one taxpayer, a separate registration
31 certificate for each place at which business is transacted with the
32 public shall be required. Each certificate shall be numbered and shall
33 show the name, residence, and place and character of business of the
34 taxpayer and such other information as the department of revenue deems
35 necessary and shall be posted in a conspicuous place at the place of

1 business for which it is issued. Where a place of business of the
2 taxpayer is changed, the taxpayer must return to the department the
3 existing certificate, and a new certificate will be issued for the new
4 place of business. No person required to be registered under this
5 section shall engage in any business taxable hereunder without first
6 being so registered. The department, by rule, may provide for the
7 issuance of certificates of registration to temporary places of
8 business.

9 (2) Unless the person is a dealer as defined in RCW 9.41.010,
10 registration under this section is not required if the following
11 conditions are met:

12 (a) A person's value of products, gross proceeds of sales, or gross
13 income of the business, from all business activities taxable under
14 chapter 82.04 RCW, is less than twelve thousand dollars per year;

15 (b) The person's gross income of the business from all activities
16 taxable under chapter 82.16 RCW is less than twelve thousand dollars
17 per year;

18 (c) The person is not required to collect or pay to the department
19 of revenue any other tax or fee which the department is authorized to
20 collect; and

21 (d) The person is not otherwise required to obtain a license
22 subject to the master application procedure provided in chapter 19.02
23 RCW.

24 (3) Persons who agree to collect and remit sales and use tax to the
25 department under the agreement and are not required to register under
26 subsection (1) of this section may:

27 (a) Register through an on-line system authorized under the
28 agreement, if the person agrees to provide additional information to
29 the department to complete the registration process; or

30 (b) Register under subsection (1) of this section.

31 **PART III. MONETARY ALLOWANCES AND VENDOR DISCOUNTS**

32 NEW SECTION. Sec. 301. A new section is added to chapter 82.32
33 RCW to read as follows:

34 (1) The department shall adopt by rule monetary allowances for
35 certified service providers, model 2 sellers, model 3 sellers, and
36 other sellers that are not model 1 or model 2 sellers. The department

1 may be guided by the provisions for monetary allowances adopted by the
2 governing board of the agreement to determine the amount of the
3 allowances and the conditions under which they are allowed. The
4 monetary allowance must be reasonable and provide adequate incentive
5 for certified service providers and sellers to collect and remit under
6 the agreement.

7 (2) For certified service providers, the monetary allowance may
8 include a base rate that applies to taxable transactions processed by
9 the certified service provider. Additionally, for a period not to
10 exceed twenty-four months following a seller's registration under RCW
11 82.32.030(3), the monetary allowance may include a percentage of tax
12 revenue generated by the seller.

13 (3) For model 2 sellers, the monetary allowance may include a base
14 rate or percentage of revenue generated by a seller registering under
15 RCW 82.32.030(3), but shall not exceed a period of twenty-four months.

16 (4) For model 3 sellers and all other sellers that are not model 1
17 sellers or model 2 sellers, the monetary allowance may include a
18 percentage of tax revenue generated by a seller registering under RCW
19 82.32.030(3), but shall not exceed a period of twenty-four months.

20 NEW SECTION. **Sec. 302.** A new section is added to chapter 82.32
21 RCW to read as follows:

22 (1) The department may adopt by rule vendor compensation for
23 sellers collecting and remitting sales and use taxes. The vendor
24 compensation may include a base rate or a percentage of tax revenue
25 collected by the seller, and may vary by type of seller. The
26 department may be guided by the findings of the cost of collection
27 study performed under the agreement, by cost of collection studies
28 performed by the department, and by vendor compensation provided by
29 other states, to determine reasonable vendor compensation for sellers
30 for the costs to collect and remit sales and use taxes.

31 (2) A seller shall not be entitled to vendor compensation while the
32 seller or its certified service provider, as defined in RCW 82.32.020,
33 receives a monetary allowance under section 201 of this act.

34 **PART IV. AMNESTY**

1 NEW SECTION. **Sec. 501.** A new section is added to chapter 82.32

2 RCW to read as follows:

3 (1) Except as provided in subsections (5), (6), (7), and (8) of
4 this section, for purposes of collecting or paying sales or use taxes
5 to the appropriate jurisdictions, all sales at retail shall be sourced
6 in accordance with this subsection and subsections (2) through (4) of
7 this section.

8 (a) When tangible personal property or a service defined as a
9 retail sale under RCW 82.04.050 is received by the purchaser at a
10 business location of the seller, the sale is sourced to that business
11 location.

12 (b) When the tangible personal property or a service defined as a
13 retail sale under RCW 82.04.050 is not received by the purchaser at a
14 business location of the seller, the sale is sourced to the location
15 where receipt by the purchaser or the purchaser's donee, designated as
16 such by the purchaser, occurs, including the location indicated by
17 instructions for delivery to the purchaser or donee, known to the
18 seller.

19 (c) When (a) and (b) of this subsection do not apply, the sale is
20 sourced to the location indicated by an address for the purchaser that
21 is available from the business records of the seller that are
22 maintained in the ordinary course of the seller's business when use of
23 this address does not constitute bad faith.

24 (d) When (a), (b), and (c) of this subsection do not apply, the
25 sale is sourced to the location indicated by an address for the
26 purchaser obtained during the consummation of the sale, including the
27 address of a purchaser's payment instrument, if no other address is
28 available, when use of this address does not constitute bad faith.

29 (e) When (a), (b), (c), or (d) of this subsection do not apply,
30 including the circumstance where the seller is without sufficient
31 information to apply those provisions, then the location shall be
32 determined by the address from which tangible personal property was
33 shipped, from which the digital good or the computer software delivered
34 electronically was first available for transmission by the seller, or
35 from which the service defined as a retail sale under RCW 82.04.050 was
36 provided, disregarding for these purposes any location that merely
37 provided the digital transfer of the product sold.

1 (2) The lease or rental of tangible personal property, other than
2 property identified in subsection (3) or (4) of this section, shall be
3 sourced as follows:

4 (a) For a lease or rental that requires recurring periodic
5 payments, the first periodic payment is sourced the same as a retail
6 sale in accordance with subsection (1) of this section. Periodic
7 payments made subsequent to the first payment are sourced to the
8 primary property location for each period covered by the payment. The
9 primary property location shall be as indicated by an address for the
10 property provided by the lessee that is available to the lessor from
11 its records maintained in the ordinary course of business, when use of
12 this address does not constitute bad faith. The property location
13 shall not be altered by intermittent use at different locations, such
14 as use of business property that accompanies employees on business
15 trips and service calls.

16 (b) For a lease or rental that does not require recurring periodic
17 payments, the payment is sourced the same as a retail sale in
18 accordance with subsection (1) of this section.

19 (c) This subsection does not affect the imposition or computation
20 of sales or use tax on leases or rentals based on a lump sum or
21 accelerated basis, or on the acquisition of property for lease.

22 (3) The lease or rental of motor vehicles, trailers, semitrailers,
23 or aircraft that do not qualify as transportation equipment shall be
24 sourced as follows:

25 (a) For a lease or rental that requires recurring periodic
26 payments, each periodic payment is sourced to the primary property
27 location. The primary property location shall be as indicated by an
28 address for the property provided by the lessee that is available to
29 the lessor from its records maintained in the ordinary course of
30 business, when use of this address does not constitute bad faith. This
31 location shall not be altered by intermittent use at different
32 locations.

33 (b) For a lease or rental that does not require recurring periodic
34 payments, the payment is sourced the same as a retail sale in
35 accordance with subsection (1) of this section.

36 (c) This subsection does not affect the imposition or computation
37 of sales or use tax on leases or rentals based on a lump sum or
38 accelerated basis, or on the acquisition of property for lease.

1 (4) The retail sale, including lease or rental, of transportation
2 equipment shall be sourced the same as a retail sale in accordance with
3 subsection (1) of this section.

4 (5) A purchaser that is a business and is not a holder of a direct
5 pay permit that knows at the time of purchase of a digital good,
6 computer software delivered electronically, or a service that the
7 digital good, computer software delivered electronically, or service
8 will be concurrently available for use in more than one jurisdiction
9 shall deliver to the seller in conjunction with its purchase a multiple
10 points of use exemption form disclosing this fact.

11 (a) Upon receipt of the multiple point of use exemption form, the
12 seller is relieved of all obligation to collect, pay, or remit the
13 applicable tax and the purchaser is obligated to collect, pay, or remit
14 the applicable tax.

15 (b) A purchaser delivering the multiple point of use exemption
16 form, or a direct pay permit in lieu of a multiple point of use
17 exemption form, may use any reasonable, but consistent and uniform,
18 method of apportionment that is supported by the purchaser's business
19 records as they exist at the time of the consummation of the sale.

20 (c) The multiple point of use exemption form shall remain in effect
21 for all future sales by the seller to the purchaser until it is revoked
22 in writing.

23 (6)(a) A purchaser of direct mail that is not a holder of a direct
24 pay permit shall provide to the seller in conjunction with the purchase
25 either a direct mail form or information that shows the jurisdictions
26 to which the direct mail is delivered to recipients.

27 (i) Upon receipt of the direct mail form, the seller is relieved of
28 all obligations to collect, pay, or remit the applicable tax and the
29 purchaser is obligated to pay or remit the applicable tax on a direct
30 pay basis. A direct mail form shall remain in effect for all future
31 sales of direct mail by the seller to the purchaser until it is revoked
32 in writing.

33 (ii) Upon receipt of information from the purchaser showing the
34 jurisdictions to which the direct mail is delivered to recipients, the
35 seller shall collect the tax according to the delivery information
36 provided by the purchaser. In the absence of bad faith, the seller is
37 relieved of any further obligation to collect tax on any transaction

1 where the seller has collected tax pursuant to the delivery information
2 provided by the purchaser.

3 (b) If the purchaser of direct mail does not have a direct pay
4 permit and does not provide the seller with either a direct mail form
5 or delivery information as required by (a) of this subsection, the
6 seller shall collect the tax according to subsection (1)(e) of this
7 section. This subsection does not limit a purchaser's obligation for
8 sales or use tax to any state to which the direct mail is delivered.

9 (c) If a purchaser of direct mail provides the seller with
10 documentation of direct pay authority, the purchaser is not required to
11 provide a direct mail form or delivery information to the seller.

12 (7) The following are sourced to the location at or from which
13 delivery is made to the consumer:

14 (a) A retail sale consisting of watercraft;

15 (b) A retail sale consisting of a modular home, manufactured home,
16 or mobile home;

17 (c) A retail sale, excluding the lease and rental, consisting of a
18 motor vehicle, trailer, semitrailer, or aircraft, that do not qualify
19 as transportation equipment; and

20 (d) Until January 1, 2006, a retail sale of tangible personal
21 property made by a person engaged in the business of selling flowers.
22 The rules for the sourcing retail sales and use taxes of flowers
23 delivered with telegraphic instructions in WAC 458-20-158, as effective
24 on July 1, 1970, shall remain in effect until January 1, 2006.

25 (8) A retail sale consisting of the providing of telecommunications
26 services shall be sourced in accordance with RCW 82.32.520.

27 (9) The definitions in this subsection apply throughout this
28 section.

29 (a) "Delivered electronically" means delivered to the purchaser by
30 means other than tangible storage media.

31 (b) "Direct mail" means printed material delivered or distributed
32 by United States mail or other delivery service to a mass audience or
33 to addressees on a mailing list provided by the purchaser or at the
34 direction of the purchaser when the cost of the items are not billed
35 directly to the recipients. "Direct mail" includes tangible personal
36 property supplied directly or indirectly by the purchaser to the direct
37 mail seller for inclusion in the package containing the printed

1 material. "Direct mail" does not include multiple items of printed
2 material delivered to a single address.

3 (c) "Receive" and "receipt" means taking possession of tangible
4 personal property, making first use of services, or taking possession
5 or making first use of digital goods, whichever comes first. "Receive"
6 and "receipt" do not include possession by a shipping company on behalf
7 of the purchaser.

8 (d) "Transportation equipment" means any of the following:

9 (i) Locomotives and railcars that are used for the carriage of
10 persons or property in interstate commerce;

11 (ii) Trucks and truck-tractors with a gross vehicle weight rating
12 of 10,001 pounds or greater, trailers, semitrailers, or passenger buses
13 that are:

14 (A) Registered through the international registration plan; and

15 (B) Operated under authority of a carrier authorized and
16 certificated by the United States department of transportation or
17 another federal authority to engage in the carriage of persons or
18 property in interstate commerce;

19 (iii) Aircraft that are operated by air carriers authorized and
20 certificated by the United States department of transportation or
21 another federal or foreign authority to engage in the carriage of
22 persons or property in interstate or foreign commerce;

23 (iv) Containers designed for use on and component parts attached or
24 secured on the items described in (d)(i) through (iii) of this
25 subsection.

26 (10) In those instances where there is no obligation on the part of
27 a seller to collect or remit use tax, the use of tangible personal
28 property or of a service, subject to use tax, is sourced to the place
29 of first use. The definition of use in RCW 82.12.010 applies to this
30 subsection.

31 **Sec. 502.** RCW 82.14.020 and 2003 c 168 s 503 and 2003 c 168 s 502
32 are each reenacted and amended to read as follows:

33 For purposes of this chapter:

34 (1) ~~((A retail sale consisting solely of the sale of tangible~~
35 ~~personal property shall be deemed to have occurred at the retail outlet~~
36 ~~at or from which delivery is made to the consumer;~~

1 ~~(2) A retail sale consisting essentially of the performance of~~
2 ~~personal, business, or professional services shall be deemed to have~~
3 ~~occurred at the place at which such services were primarily performed,~~
4 ~~except that for the performance of a tow truck service, as defined in~~
5 ~~RCW 46.55.010, the retail sale shall be deemed to have occurred at the~~
6 ~~place of business of the operator of the tow truck service;~~

7 ~~(3) A retail sale consisting of the rental of tangible personal~~
8 ~~property shall be deemed to have occurred (a) in the case of a rental~~
9 ~~involving periodic rental payments, at the place of primary use by the~~
10 ~~lessee during the period covered by each payment, or (b) in all other~~
11 ~~cases, at the place of first use by the lessee;~~

12 ~~(4) A retail sale within the scope of RCW 82.04.050(2), and a~~
13 ~~retail sale of taxable personal property to be installed by the seller~~
14 ~~shall be deemed to have occurred at the place where the labor and~~
15 ~~services involved were primarily performed;~~

16 ~~(5)(a) A retail sale consisting of the providing to a consumer of~~
17 ~~telephone service, as defined in RCW 82.04.065, other than a sale of~~
18 ~~tangible personal property under subsection (1) of this section or a~~
19 ~~rental of tangible personal property under subsection (3) of this~~
20 ~~section or a sale of mobile telecommunications services, shall be~~
21 ~~deemed to have occurred at the situs of the telephone or other~~
22 ~~instrument through which the telephone service is rendered;~~

23 ~~(b) A retail sale consisting of the providing of telecommunications~~
24 ~~services shall be sourced in accordance with RCW 82.32.520;~~

25 ~~(6) A retail sale of linen and uniform supply services is deemed to~~
26 ~~occur as provided in RCW 82.08.0202;~~

27 ~~(7)) "City" means a city or town;~~

28 ~~((8)) (2) The meaning ascribed to words and phrases in chapters~~
29 ~~82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as~~
30 ~~applicable, shall have full force and effect with respect to taxes~~
31 ~~imposed under authority of this chapter;~~

32 ~~((9)) (3) "Taxable event" shall mean any retail sale, or any use,~~
33 ~~upon which a state tax is imposed pursuant to chapter 82.08 or 82.12~~
34 ~~RCW, as they now exist or may hereafter be amended: PROVIDED, HOWEVER,~~
35 ~~That the term shall not include a retail sale taxable pursuant to RCW~~
36 ~~82.08.150, as now or hereafter amended;~~

37 ~~((10)) (4) "Treasurer or other legal depository" shall mean the~~
38 ~~treasurer or legal depository of a county or city.~~

1 **PART VII. TAXABILITY MATRIX**

2 NEW SECTION. **Sec. 701.** A new section is added to chapter 82.32
3 RCW to read as follows:

4 (1) The department of revenue shall complete a taxability matrix
5 maintained by the member states of the agreement in downloadable
6 format. The matrix contains terms defined in the agreement. The
7 department of revenue shall provide notice of changes in the taxability
8 of products or services listed in the matrix.

9 (2) Sellers and certified service providers are relieved from
10 liability to the state and to local jurisdictions for having charged or
11 collected the incorrect amount of sales or use tax if the error
12 resulted from reliance on erroneous information provided by the
13 department of revenue in the taxability matrix.

14 **PART VIII. DELIVERY CHARGES**

15 NEW SECTION. **Sec. 801.** A new section is added to chapter 82.08
16 RCW to read as follows:

17 When computing the tax levied by RCW 82.08.020, if a shipment
18 consists of taxable tangible personal property and nontaxable tangible
19 personal property, and delivery charges are included in the sales
20 price, the seller must collect and remit tax on the percentage of
21 delivery charges allocated to the taxable tangible property, but does
22 not have to collect and remit tax on the percentage allocated to exempt
23 tangible personal property. The seller may use either of the following
24 percentages to determine the taxable portion of the delivery charges:

25 (1) A percentage based on the total sales price of the taxable
26 tangible property compared to the total sales price of all tangible
27 personal property in the shipment; or

28 (2) A percentage based on the total weight of the taxable tangible
29 personal property compared to the total weight of all tangible personal
30 property in the shipment.

31 NEW SECTION. **Sec. 802.** A new section is added to chapter 82.12
32 RCW to read as follows:

33 When computing the tax levied by RCW 82.12.020, if a shipment
34 consists of taxable tangible personal property and nontaxable tangible
35 personal property, and delivery charges are included in the purchase

1 price, the retailer must collect and remit tax on the percentage of
2 delivery charges allocated to the taxable personal property, but does
3 not have to collect and remit tax on the percentage allocated to exempt
4 tangible personal property. The retailer may use either of the
5 following percentages to determine the taxable portion of the delivery
6 charges:

7 (1) A percentage based on the total purchase price of the taxable
8 personal property compared to the total purchase price of all tangible
9 personal property in the shipment; or

10 (2) A percentage based on the total weight of the taxable tangible
11 personal property compared to the total weight of all tangible personal
12 property in the shipment.

13 **PART IX. MISCELLANEOUS PROVISIONS**

14 NEW SECTION. **Sec. 901.** (1) Sections 501 through 503 and 902 of
15 this act take effect April 1, 2005. Section 401 of this act takes
16 effect when Washington becomes a member state of the streamlined sales
17 and use tax agreement. Section 302 of this act takes effect when:

18 (a) The United States congress grants individual states the
19 authority to impose sales and use tax collection duties on remote
20 sellers; or

21 (b) It is determined by a court of competent jurisdiction, in a
22 judgment not subject to review, that a state can impose sales and use
23 tax collection duties on remote sellers.

24 (2) The remainder of this act takes effect July 1, 2004.

25 **Sec. 902.** 2003 c 168 s 902 (uncodified) is amended to read as
26 follows:

27 (1) If a court of competent jurisdiction enters a final judgment on
28 the merits that is based on federal or state law, is no longer subject
29 to appeal, and substantially limits or impairs the essential elements
30 of P.L. 106-252, 4 U.S.C. Secs. 116 through 126, or chapter 67, Laws of
31 2002, then chapter 67, Laws of 2002 is null and void in its entirety,
32 except as provided in subsection (2) of this section.

33 (2) ~~((If the contingency in subsection (1) of this section occurs,~~
34 ~~section 502, chapter 168, Laws of 2003 is null and void))~~ Subsection

1 (1) of this section does not apply to section 7, chapter 67, Laws of
2 2002 on or after April 1, 2005.

3 NEW SECTION. Sec. 903. Part headings used in this act are not any
4 part of the law.

5 NEW SECTION. Sec. 904. If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

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