Appeals Process

Glossary of Terms

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Introduction

This publication provides a general background to help you better understand the terms used in connection with the appeals process of the California Department of Tax and Fee Administration (CDTFA). For convenience and ease of reading, this publication uses the term "taxpayer" to refer to persons who pay taxes as well as to persons who pay fees.

In addition to this publication, you can access information about CDTFA programs in a number of ways:

- For information about laws or regulations related to a specific tax or fee administered by the CDTFA, you may access CDTFA's resource library online at *www.cdtfa.ca.gov*.
- You can access publications and manuals discussing many aspects of CDTFA-administered tax programs online, at *www.cdtfa.ca.gov/formspubs*. Publications are available for specific industries, including construction contractors, restaurants, and motor vehicle dealers, and by processes, such as resale certificates, interest and penalties, and tax collection procedures.
- You may also seek information about your specific circumstances by calling the CDTFA's Customer Service Center at 1-800-400-7115 (TTY:711) or by contacting the CDTFA unit responsible for administering the tax or fee program about which you wish to inquire.

The CDTFA always strives to provide accurate advice concerning the tax and fee programs it administers. However, it is important to understand that you cannot assert that your failure to pay a tax or fee resulted from advice given by the CDTFA unless:

1. The CDTFA's advice was in writing, **and**
2. You submitted a written request for advice that both identified the specific taxpayer requesting the advice and provided all relevant information.

Accordingly, the information within this publication does not constitute legal advice and cannot be relied upon for that purpose.

Finally, it is extremely important to remember that you must file a claim for refund for any disputed payments made to CDTFA, even if you have already filed an appeal to dispute the payment.

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Section 1: Terms Applying to All Appeals

The CDTFA handles appeals for the tax programs it administers (business taxes and special taxes and fees), and for the Franchise and Personal Income Tax, which is administered by the Franchise Tax Board (FTB). For both types of appeals, you may encounter the following terms in letters, forms, and documents sent by the CDTFA or the FTB.

Affidavit

A person's written statement on a CDTFA form or other document that the person certifies to be true and correct.

Appeal

A process that enables taxpayers to contest a proposed liability or refund for taxes or fees. See also *Administrative Protest* in the Business Taxes section.

Board Decision

A decision made by the Board Members, in public, at a Board Meeting. (A quorum of at least three of the five Board Members must be present for the Board to take any action, including hearing or deciding an appeal.)

Board Hearing

A public meeting where the taxpayer and CDTFA staff (or FTB staff, if applicable) each have the opportunity to present oral arguments about unresolved tax or fee disputes.

Board of Equalization (BOE)

The California state agency that administers sales and use taxes, property taxes, and special taxes and fees, and that hears personal income and corporate franchise tax appeals from actions of the FTB.

Board Member

The BOE consists of five Board Members, each serving a four-year term. Four Board Members are elected from California's four geographical equalization districts and the fifth is the State Controller, who is elected on a statewide basis and serves as a Board Member in an ex-officio capacity.

Burden of Proof

The person who has the "burden of proof" is the person who must provide evidence and explanations to the CDTFA in order to win an appeal. Generally, the taxpayer has the burden of proof under California law, but there are situations where the CDTFA or the FTB has the burden of proof, such as when they are alleging that a taxpayer committed fraud.

Contribution Disclosure Form

A form that must be filed before a taxpayer's hearing by the taxpayer (and by any agent of the taxpayer or other hearing participant, as defined by regulation) to report contributions made to any Board Member during the 12 months prior to the hearing or decision on the taxpayer's appeal.

Documentary Evidence

A type of written proof that is offered to establish the existence or nonexistence of a fact that is in dispute.

Equitable Relief

See *Innocent Spouse or Registered Domestic Partner Relief*

Franchise Tax Board (FTB)

The California state agency that administers California's personal income tax and corporation franchise tax.

Hearing Request

A written request for an oral Board hearing. (The request can be made when the taxpayer first files the appeal or later as specified by applicable regulations.)

Interest

A charge required by statute that accrues each month on unpaid taxes and fees.

Notice of Board Hearing

A notice sent to inform a taxpayer of the scheduled date of the Board hearing on the taxpayer's appeal, generally sent at least 75 days before the hearing date.

Privacy Notice

A notice sent to taxpayers and their representatives notifying them about information provided during the appeals process that may be disclosed to the public or other government agencies.

Request for Disclosure Statement

A form mailed to all taxpayers and representatives who are going to appear before the Board Members at a Board hearing. The form enables taxpayers and representatives to disclose, on the record, any contributions totaling $250 or more that were made within the last 12 months to any of the Members of the Board. The forms are to be completed and returned as soon as possible. See also *Contribution Disclosure Form*.

Response to Notice of Board Hearing

A form included with the Notice of Hearing that the taxpayer must complete and return within 15 days to confirm that the taxpayer will attend the hearing.

Rules for Tax Appeals

The CDTFA regulations governing the administrative review process for all CDTFA-administered tax and fee programs as well as the CDTFA's review of appeals from the FTB, officially cited as California Code of Regulations, Title 18, sections 5000-5605.

Standard of Proof

The standard of proof refers to the amount of evidence that a person must present in order to win an appeal. Unlike criminal cases, where the prosecutor must prove the defendant's guilt beyond reasonable doubt, taxpayers, in most situations, can win their appeals by presenting a preponderance of the evidence. This means that the taxpayers need only show that it is more likely than not that their arguments or claims are true.

Taxpayers' Rights Advocate Office

The Taxpayers' Rights Advocate Office provides impartial help on tax matters for taxpayers when they are unable to resolve their matters through normal channels, when they want information regarding procedures related to a particular set of circumstances, or when they believe there were rights violations in their dealings with the CDTFA. The Taxpayers' Rights Advocate Office may be contacted by telephone at 1-888-324-2798 or through the email form on the CDTFA's website at *www.cdtfa.ca.gov/info/email*.

Section 2: Terms Applying to Business Taxes Appeals

You may encounter the following terms when you file a business taxes appeal. A "business tax" refers to tax or fee programs administered by the CDTFA. Examples of business taxes include sales and use tax, fuel and alcohol taxes, cigarette and tobacco taxes, and environmental fees. For a complete list of taxes administered by the CDTFA and a brief description of each tax program, see the Information Resource Library (IRL) on CDTFA's website. The IRL can be accessed at this address: *www.cdtfa.ca.gov*.

Administrative Protest

An appeal filed by a taxpayer after the deadline for filing a normal appeal has passed or prior to issuance of a Notice of Determination or other notices of deficiency. The CDTFA is not required to accept such appeals, but if it does, the appeals are called administrative protests and they are reviewed as if they were timely petitions.

Annotations

Summaries of selected legal opinions issued by the CDTFA's Legal Division which provide helpful guidance in applying applicable law and regulations, but which do not have the force and effect of law.

Appeals Conference

A meeting with an impartial Appeals Bureau staff member during which the taxpayer and representatives from the responsible unit of the CDTFA present their respective positions regarding a contested assessment or claim for refund.

Audit

A review of taxpayer records by a CDTFA auditor to determine if taxes or fees have been reported correctly.

Audit Issue Presentation Sheet

A report prepared for each audit issue that includes a discussion of the facts, relevant law, and proposed adjustment. The sheet is given to taxpayers during and after the conclusion of their audits.

Audit Period

The tax period for which a taxpayer's records will be reviewed in an audit.

Audit Report

A written report issued when an audit is completed. This report explains the auditor's findings and the reasons for any changes in the amount of a tax or fee due (debit or credit).

Auto Pay

Automatic debits from a taxpayer's bank account for payments required under a voluntary installment payment agreement.

Bankruptcy

A federal legal process that enables insolvent debtors to either eliminate some or all of their debts or to work out a payment plan to pay a portion (or all) of their debts over time.

Board Hearing Summary

A written document prepared for the Board Members by the Appeals Bureau which summarizes the remaining disputed issues to be considered during the oral hearing.

Certificate of Tax Clearance

A document issued by the CDTFA in connection with the sale of a business or stock of goods if, after receiving a written request for the certificate, the CDTFA determines that the business does not have a tax or fee liability. When the CDTFA issues the requested certificate, the purchaser of the business for which it was issued will not be subject to "successor liability" even if it is later determined that the predecessor business did, in fact, have a tax or fee liability.

Claim for Refund

A written claim that states a tax or fee has been overpaid. It outlines specific grounds for the claim and seeks a refund of the claimed overpayment. The limitations for filing a claim may depend on a number of factors, including the date the disputed amount was paid, the filing date of the return reporting the claimed overpaid amount, or the date of a CDTFA determination that includes a claimed overpayment. For more details on time limitations for filing claims for refund, see publication 117, *Filing a Claim for Refund,* and Regulation 5231, *Limitation Period for Claim for Refund.*

Claimant

A taxpayer who files a claim for refund.

Collection Cost Reimbursement

A fee imposed on past due liabilities that is intended to cover the CDTFA's costs of collecting those past due liabilities.

Computer-Assisted Audit

An audit based on an examination of the electronic records of the taxpayer.

Decision and Recommendation (D&R)

Document prepared by Appeals Bureau staff after completion of the appeals conference process. The D&R summarizes the positions of the taxpayer and BOE staff on the disputed issues and provides the factual findings, analysis, and conclusions and recommendations of the Appeals Bureau with respect to those issues.

Deficiency Assessment

The generic term of a billing for tax or fee issued by the CDTFA to a taxpayer. The most common name for a deficiency assessment issued by the CDTFA is a Notice of Determination.

Dual Determination

A deficiency assessment issued to a person other than the person who incurred the primary liability for the subject tax or fee. For example, under certain circumstances, a purchaser of a business or stock of goods may become liable for what is known as "successor liability," up to the purchase price, for the tax or fee liability incurred by the seller of the business. If this happens, the CDTFA issues the purchaser a Notice of Successor Liability. The seller of the business who incurred the tax or fee liability remains liable for the liability it incurred, and the Notice of Successor Liability issued to the purchaser is a "dual" determination. (While two persons are billed for the same liability, the CDTFA will collect the liability only once.)

Exemption Certificate

A document issued by a purchaser to its seller certifying that the property purchased according to the certificate will be used in a manner or for a purpose entitling the seller to regard the sale as exempt from tax.

Exit Conference

A conference held at the conclusion of an audit so that staff can explain the results of the audit to the taxpayer (for instance, the tax was underpaid, the tax was overpaid, or the correct amount of tax was paid).

Finality Penalty

A penalty imposed if the taxpayer does not pay a deficiency assessment before it becomes final.

Innocent Spouse or Registered Domestic Partner Relief

A form of equitable relief authorized by the Revenue and Taxation Code under which the CDTFA may grant the claim for relief from joint liability by a spouse or registered domestic partner for certain taxes and fees attributable to the claimant's spouse or registered domestic partner when the applicable statutory requirements are met.

Late Filing Penalty

A 10 percent penalty is imposed when a taxpayer fails to file a return when due. The amount of penalty is based on the amount reported on the late return.

Late Payment Penalty

A penalty imposed when a taxpayer fails to pay a tax or fee when due. The penalty is generally 6 percent or 10 percent of the unpaid amount. For more information, see publication 75, *Interest and Penalties.*

Lien

A legal encumbrance against real or personal property to secure payment of a debt.

Levy

The actual seizure of property, including money, to satisfy a collectible debt. A levy on wages is also referred to as a wage garnishment.

Notice of Appeals Conference

Written notice of the time, date, and location of an appeals conference.

Notice of Denial of Claim for Refund

A notice issued to inform the taxpayer that its claim for refund has been denied.

Notice of Determination

A notice issued by the CDTFA to a taxpayer to assess a tax or fee liability and any applicable penalties. (The assessed liability generally becomes final 30 days after issuance if the taxpayer does not file a petition for redetermination appealing the assessment within 30 days of issuance.)

Notice of Jeopardy Determination

A notice issued by the CDTFA to a taxpayer to assess a tax or fee liability and any applicable penalties that is immediately due and payable. The CDTFA issues this type of billing when it believes that collection of a liability would be jeopardized by delay.

Notice of Levy

A notice issued to a person holding money or property of a taxpayer owing amounts to the CDTFA to levy that money or property to satisfy the debt of the taxpayer to the CDTFA. The person to whom the Notice of Levy is issued must turn over to the CDTFA the money or property of the taxpayer held by the person, up to the amount of the debt owed by the taxpayer to the CDTFA. The taxpayer receives a copy of this notice.

Notice of Reconsideration

A notice issued by the CDTFA setting forth the CDTFA's decision on a petition for reconsideration of successor liability, specifying the liability, if any, owed by the person filing the petition.

Notice of Redetermination

A notice issued by the CDTFA setting forth the CDTFA's decision on a petition for redetermination, specifying the liability, if any, owed by the person filing the petition.

Notice of Refund

A notice issued to the taxpayer by the CDTFA stating that some or all of the taxpayer's claim for refund has been granted.

Notice of Successor Liability

A notice issued by the CDTFA to the purchaser of a business or stock of goods to assess that purchaser for the unpaid liability due from the seller to the CDTFA, up to the purchase price of the business or stock of goods. A purchaser served with a notice of successor liability may file a petition for reconsideration of the liability. See publication 17, *Appeals Procedures,* or Regulation 1702, *Successor's Liability.*

Offer in Compromise

With respect to a final liability, a proposal by a taxpayer to pay less than the final amount of taxes or fees due.

Petition for Reconsideration

A written appeal filed by a taxpayer to request that the CDTFA reconsider a liability assessed by a Notice of Successor Liability.

Petition for Redetermination

A written appeal filed by a taxpayer to request that the CDTFA reconsider a deficiency assessed by a Notice of Determination or a Notice of Deficiency Assessment. Petitions for redetermination that are filed before issuance of notices of determination or other deficiency notices are not valid petitions. However, they may be accepted as an administrative protest. See also *Administrative Protest*.

Petitioner

A taxpayer who files a petition for reconsideration or petition for redetermination is called a "petitioner" for purposes of that appeal.

Reaudit

A further review of the records of a taxpayer after a Notice of Determination has been issued.

Reaudit Report

Where a reaudit results in an adjustment to the tax, fees, or penalties, a reaudit report is issued to reflect and explain those adjustments.

Request for Relief of Penalty

A taxpayer may seek relief of a late filing penalty or a late payment penalty by submitting a written statement setting forth the facts on which it bases its claim for relief, signed under penalty of perjury. (The CDTFA has prepared a form that can be used for this purpose, CDTFA-735, *Request for Relief from Penalty*.) The CDTFA can grant the requested relief if it finds that the taxpayer's failure to file a timely return or make a timely payment was due to reasonable cause and circumstances beyond the control of the taxpayer, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect.

Resale Certificate

A document issued by a purchaser to its seller certifying that the purchase is for resale in the regular course of the purchaser's business.

Response to Notice of Appeals Conference

A form sent with the Notice of Appeals Conference that the taxpayer should complete and return within 15 days to confirm the date, time, and location of the scheduled appeals conference.

Responsible Person

Any officer, member, manager, employee, director, shareholder, partner, or other person having control or supervision of, or who is charged with the responsibility for, the filing of returns or the payment of tax or who has a duty to act for a corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any provision of the Sales and Use Tax Law. See Regulation 1702.5, *Responsible Person Liability.*

Responsible Person Liability

Any responsible person who willfully does not pay tax, or who is the cause of the nonpayment of any sales or use taxes due from a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, under specific circumstances, shall be personally liable for such taxes and interest and penalties on those taxes, not paid upon the termination, dissolution, or abandonment of the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company. This personal liability is referred to as a "responsible person liability." See Regulation 1702.5, *Responsible Person Liability.*

Revised Audit

A further review of taxpayer records after the original audit is performed and before the issuance of a Notice of Determination.

Revised Audit Report

Where a revised audit results in an adjustment to the tax, fees, or penalties, a revised report is issued to reflect and explain those adjustments.

Revocation of Permit or License

An action that may be taken whenever any permit or license holder fails to comply with the applicable provisions of law.

Sales Tax

A tax imposed on the retail sale of tangible personal property in California. The sales tax is imposed on the retailer of tangible personal property, not the purchaser.

Sales Tax Reimbursement

Although the sales tax is imposed on the retailer making the retail sale, the retailer may collect reimbursement from the purchaser for the sales tax if their contract of sale so provides (usually called simply "sales tax").

Seller's Permit

Every person desiring to engage in business in California as a seller of tangible personal property which is subject to sales tax, must hold a seller's permit issued by the CDTFA.

Successor Liability

The amount owed by the purchaser of a business or stock of goods, up to the purchase price, for failing to withhold from the purchase price an amount to satisfy the tax or fee liability owed to the CDTFA by the seller of the business or stock of goods.

Transfers of Cigarettes and Tobacco Products Between Retail Stores

Retailers must keep documents proving that the excise taxes have been paid on all cigarette and tobacco products in their inventory. They must provide these documents to CDTFA staff when requested. Transfers of cigarette and tobacco products between retail stores are only allowed if the retail stores are owned and licenses held by the same person/ownership and records are maintained at each store location involved in the transfer.

Undocumented Cigarette or Tobacco Products

Any cigarette or tobacco product in the inventory of a licensed retailer for which the retailer lacks documentation that the excise tax has been paid on the product. In the case of cigarettes, documentation constitutes a valid California Cigarette Tax Stamp affixed to the cigarette pack. For tobacco products, it is the purchase invoice for the tobacco product, showing that the product was purchased from a licensed tobacco products distributor and that the tax has been charged on the invoice.

Underground Storage Tank (UST) Permit

Permit to own or operate an underground storage tank issued by the local agency to the owner or operator of the tank.

Use Tax

California use tax generally applies to the storage, use, or other consumption of tangible personal property in California. California use tax is a companion to the sales tax. Persons or businesses generally owe use tax when they use, store, give away, or consume physical products in California if they did not pay California sales tax on their purchase. Use tax generally applies to untaxed purchases made from out-of-state sellers. The use tax rate for a California location is the same as the sales tax rate.

Waiver of Limitation

A document signed by a taxpayer extending the deadline (that is, the statute of limitation) by which the CDTFA may assess additional taxes or fees for a specified reporting period.

XYZ Letter

A letter in a form approved by the CDTFA which is sent to some or all of the seller's purchasers inquiring as to the purchaser's disposition of the property purchased from the seller. A response to an XYZ letter is not equivalent to a timely and valid resale certificate, but the CDTFA will consider the responses in determining whether the seller has established that its sales were for resale.

Section 3: Terms Applying to Franchise and Personal Income Tax Appeals

Franchise and Personal Income Tax appeals are initially administered by the FTB. If you disagree with certain types of actions or determinations made by the FTB, such as its denial of a refund claim, you may file an appeal which will be determined by the elected Board Members. Often, this request would be submitted after you receive a "Notice of Action" from the FTB affirming a proposed assessment or denying a refund claim. The following terms may appear in Franchise and Personal Income Tax appeal letters, forms, or documents sent by the FTB or CDTFA.

Appeal Letter

A written statement from the taxpayer to the CDTFA sent after the taxpayer has exhausted all administrative appeal rights with the FTB. The purpose of the letter is to explain the taxpayer's disagreement with the FTB and why the taxpayer believes that the FTB is incorrect. See Regulation 5420, *Appeal Filing Requirements*. See also *Notice of Action*.

Briefing

The process of providing information to the CDTFA in an income tax appeal. Briefs are written statements filed by the taxpayer and the FTB. They may include evidence, explanations, and legal arguments. They must be filed by certain deadlines. See also *Extension*.

Deferral

A written request to postpone a hearing for a specified period of time. A deferral may be requested by the taxpayer, the FTB, a Board member, or the CDTFA's Appeals Bureau staff.

Exhibits

Written evidence submitted for presentation at a hearing, such as sworn statements or document photocopies.

Extension

A written request for more time to submit a brief. See also *Briefing*.

Hearing Summary

A written document summarizing the facts, contentions, law and evidence of an appeal prepared by independent CDTFA attorneys in preparation for an oral hearing before the Board Members. The hearing summary is sent to the parties and the Board Members prior to an oral hearing at the CDTFA, and is intended to assist the Board Members in their consideration of the appeal at an oral hearing.

Innocent Joint Filer Relief

A form of equitable relief authorized by the Revenue and Taxation Code under which the FTB may grant the claim for relief from joint liability by a spouse or registered domestic partner for certain taxes attributable to the claimant's spouse or registered domestic partner when the applicable statutory requirements are met.

Jurisdiction

The determination as to whether the CDTFA has the legal right to hear an income tax appeal, or a particular issue raised by an appeal. The CDTFA's jurisdiction in income tax matters is limited by law. For example, the CDTFA can determine the correct amount of income tax due, but it cannot require the FTB to hold another protest hearing or apologize for making a mistake.

Letter Decision

A written decision prepared by the CDTFA's Appeals Bureau that contains a short explanation of the reasons for the CDTFA's decision on an appeal. A Letter Decision may be issued when the Board Members decide an appeal without adopting a Summary Decision or a formal opinion, and is frequently issued following an oral hearing.

Notice of Action (NOA)

A written response from the FTB setting forth its determination following a taxpayer's protest. The notice will typically note that taxpayers must timely appeal the NOA to the CDTFA if they do not agree with the amounts listed on the NOA and they want CDTFA to decide an appeal.

Notice of Proposed Assessment (NPA)

A written notice from the FTB informing a taxpayer that it made audit adjustments to a taxpayer's account for a specified tax year. If a taxpayer disagrees with the proposed assessment, the taxpayer must file a timely protest with the FTB. If a timely protest is not filed, the assessment will become final and the FTB will bill the taxpayer for the amount due, including penalties and interest.

Oral Hearing

The opportunity for taxpayers or representatives to personally appear before the Board Members during a Board Meeting and present oral arguments regarding issues of fact and law relevant to the taxpayer's matter.

Perfecting an Appeal or Petition for Rehearing

Submission of substantially all information needed for the CDTFA to accept an income tax appeal. The CDTFA has the discretion to accept a taxpayer's appeal even if the appeal letter is missing some necessary information; when this happens, the taxpayer may be given an opportunity to supply the missing information so that the appeal can proceed.

Petition for Rehearing

A request for reconsideration after the CDTFA's determination of an appeal. The petition must be filed within 30 days of the date of the Board's decision and must identify grounds for a rehearing, such as newly discovered evidence. See also *Board Decision*.

Respondent

A term referring to the FTB and, where appropriate, authorized representatives of the FTB in the context of appeals from the FTB to the CDTFA. (See Regulation 5411, *Appeals from Actions of the Franchise Tax Board)*.

Respondent's Contentions

The FTB's factual and legal reasons for recommending that the Board Members deny an appeal in whole or in part are referred to as the "respondent's contentions."

Summary Decision

A written decision that contains the findings of fact and conclusions of law that form the basis of the CDTFA's decision on an appeal. A Summary Decision is frequently issued when a decision is requested by the taxpayer based on the written record and without an oral hearing.

Suspended Corporation

A corporation that has had its powers, rights, and privileges to do business in California suspended or forfeited by the:

- Secretary of State for failure to file a required Statement of Information; or
- FTB for failure to file a tax return and/or failure to pay taxes, penalties, or interest.

Common Notices Issued by the FTB	
Request for Tax Return *Demand for Tax Return*	FTB has no record of a taxpayer's California personal income tax return for the year specified. If the taxpayer fails to respond, FTB may impose a Demand Penalty.
Notice of Tax Change *Return Information Notice*	FTB found and corrected one or more errors while processing a tax return.
Earnings Withholding Order	FTB issues this order to taxpayer's employer to send FTB a percentage of wages to pay the taxpayer's debt.
Order to Withhold	FTB issues this order to a taxpayer's financial institution to attach assets to pay the taxpayer's debt.
Notice of Tax Lien	FTB issues a lien against the taxpayer's real or personal property to secure an amount the taxpayer owes.
Demand for Payment	A taxpayer must pay the amount owed to FTB to prevent further collection action.
Collection Referral	If a taxpayer does not pay the balance in full or contact the FTB within 30 days from the date of the notice, FTB may refer the account to a private collection agency.
Audit Contact Letter	Notification that FTB is examining a taxpayer's return.

Requests for additional copies of this publication may be made through our Online Ordering System on our website at *www.cdtfa.ca.gov/cgi-bin/form_search.cgi.*

You may also call our Customer Service Center at 1-800-400-7115 (TTY: 711) to request a copy.

California Department of Tax and Fee Administration

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