

103^D CONGRESS
1ST SESSION

H. R. 1325

To amend the Internal Revenue Code of 1986 to provide tax credits for Indian investment and employment, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 1993

Mr. RICHARDSON introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide tax credits for Indian investment and employment, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Indian Employment
5 and Investment Act of 1993”.

6 **SEC. 2. INVESTMENT TAX CREDIT FOR PROPERTY ON IN-**
7 **DIAN RESERVATIONS.**

8 (a) ALLOWANCE OF INDIAN RESERVATION CRED-
9 IT.—Section 46 of the Internal Revenue Code of 1986 (re-
10 lating to investment credits) is amended by striking “and”

1 at the end of paragraph (2), by striking the period at the
 2 end of paragraph (3) and inserting “, and”, and by adding
 3 after paragraph (3) the following new paragraph:

4 “(4) the Indian reservation credit.”.

5 (b) AMOUNT OF INDIAN RESERVATION CREDIT.—

6 (1) IN GENERAL.—Section 48 of such Code (re-
 7 lating to the energy credit and the reforestation
 8 credit) is amended by adding after subsection (b)
 9 the following new subsection:

10 “(c) INDIAN RESERVATION CREDIT.—

11 “(1) IN GENERAL.—For purposes of section 46,
 12 the Indian reservation credit for any taxable year is
 13 the Indian reservation percentage of the qualified in-
 14 vestment in qualified Indian reservation property
 15 placed in service during such taxable year, deter-
 16 mined in accordance with the following table:

“In the case of qualified

Indian reservation property which is:	The Indian reservation percentage is:
Reservation personal property	10
New reservation construction property	15
Reservation infrastructure investment	15.

17 “(2) QUALIFIED INVESTMENT IN QUALIFIED
 18 INDIAN RESERVATION PROPERTY DEFINED.—For
 19 purposes of this subpart—

20 “(A) IN GENERAL.—The term ‘qualified
 21 Indian reservation property’ means property—

22 “(i) which is—

1 “(I) reservation personal prop-
2 erty,

3 “(II) new reservation construc-
4 tion property, or

5 “(III) reservation infrastructure
6 investment, and

7 “(ii) not acquired (directly or indi-
8 rectly) by the taxpayer from a person who
9 is related to the taxpayer (within the
10 meaning of section 465(b)(3)(C)).

11 The term ‘qualified Indian reservation property’
12 does not include any property (or any portion
13 thereof) placed in service for purposes of con-
14 ducting or housing class I, II, or III gaming (as
15 defined in section 4 of the Indian Gaming Reg-
16 ulatory Act (25 U.S.C. 2703)).

17 “(B) QUALIFIED INVESTMENT.—The term
18 ‘qualified investment’ means—

19 “(i) in the case of reservation infra-
20 structure investment, the amount expended
21 by the taxpayer for the acquisition or con-
22 struction of the reservation infrastructure
23 investment; and

1 “(ii) in the case of all other qualified
2 Indian reservation property, the taxpayer’s
3 basis for such property.

4 “(C) RESERVATION PERSONAL PROP-
5 PERTY.—The term ‘reservation personal prop-
6 erty’ means qualified personal property which is
7 used by the taxpayer predominantly in the ac-
8 tive conduct of a trade or business within an
9 Indian reservation. Property shall not be treat-
10 ed as ‘reservation personal property’ if it is
11 used or located outside the Indian reservation
12 on a regular basis.

13 “(D) QUALIFIED PERSONAL PROPERTY.—
14 The term ‘qualified personal property’ means
15 property—

16 “(i) for which depreciation is allow-
17 able under section 168,

18 “(ii) which is not—

19 “(I) nonresidential real property,

20 “(II) residential rental property,

21 or

22 “(III) real property which is not
23 described in (I) or (II) and which has
24 a class life of more than 12.5 years.

1 For purposes of this subparagraph, the terms
2 ‘nonresidential real property’, ‘residential rental
3 property’, and ‘class life’ have the respective
4 meanings given such terms by section 168.

5 “(E) NEW RESERVATION CONSTRUCTION
6 PROPERTY.—The term ‘new reservation con-
7 struction property’ means qualified real prop-
8 erty—

9 “(i) which is located in an Indian res-
10 ervation,

11 “(ii) which is used by the taxpayer
12 predominantly in the active conduct of a
13 trade or business within an Indian reserva-
14 tion, and

15 “(iii) which is originally placed in
16 service by the taxpayer.

17 “(F) QUALIFIED REAL PROPERTY.—The
18 term ‘qualified real property’ means property
19 for which depreciation is allowable under sec-
20 tion 168 and which is described in clause (I),
21 (II), or (III) of subparagraph (D)(ii).

22 “(G) RESERVATION INFRASTRUCTURE IN-
23 VESTMENT.—

24 “(i) IN GENERAL.—The term ‘reserva-
25 tion infrastructure investment’ means

1 qualified personal property or qualified real
2 property which—

3 “(I) benefits the tribal infrastruc-
4 ture,

5 “(II) is available to the general
6 public, and

7 “(III) is placed in service in con-
8 nection with the taxpayer’s active con-
9 duct of a trade or business within an
10 Indian reservation.

11 “(ii) PROPERTY MAY BE LOCATED
12 OUTSIDE THE RESERVATION.—Qualified
13 personal property and qualified real prop-
14 erty used or located outside an Indian res-
15 ervation shall be reservation infrastructure
16 investment only if its purpose is to connect
17 to existing tribal infrastructure in the res-
18 ervation, and shall include, but not be lim-
19 ited to, roads, power lines, water systems,
20 railroad spurs, and communications facili-
21 ties.

22 “(H) COORDINATION WITH OTHER CRED-
23 ITS.—The term ‘qualified Indian reservation
24 property’ shall not include any property with re-

1 spect to which the energy credit or the rehabili-
2 tation credit is allowed.

3 “(3) REAL ESTATE RENTALS.—For purposes of
4 this section, the rental to others of real property lo-
5 cated within an Indian reservation shall be treated
6 as the active conduct of a trade or business in an
7 Indian reservation.

8 “(4) INDIAN RESERVATION DEFINED.—For
9 purposes of this subpart, the term ‘Indian reserva-
10 tion’ means a reservation, as defined in—

11 “(A) section 3(d) of the Indian Financing
12 Act of 1974 (25 U.S.C. 1452(d)), or

13 “(B) section 4(10) of the Indian Child
14 Welfare Act of 1978 (25 U.S.C. 1903(10)).

15 “(5) LIMITATION BASED ON UNEMPLOY-
16 MENT.—

17 “(A) GENERAL RULE.—The Indian res-
18 ervation credit allowed under section 46 for any
19 taxable year shall equal—

20 “(i) if the Indian unemployment rate
21 on the applicable Indian reservation for
22 which the credit is sought exceeds 300 per-
23 cent of the national average unemployment
24 rate at any time during the calendar year
25 in which the property is placed in service

1 or during the immediately preceding 2 cal-
2 endar years, 100 percent of such credit,

3 “(ii) if such Indian unemployment
4 rate exceeds 150 percent but not 300 per-
5 cent, 50 percent of such credit, and

6 “(iii) if such Indian unemployment
7 rate does not exceed 150 percent, 0 per-
8 cent of such credit.

9 “(B) SPECIAL RULE FOR LARGE
10 PROJECTS.—In the case of a qualified Indian
11 reservation property which has (or is a compo-
12 nent of a project which has) a projected con-
13 struction period of more than 2 years or a cost
14 of more than \$1,000,000, subparagraph (A)
15 shall apply by substituting ‘during the earlier of
16 the calendar year in which the taxpayer enters
17 into a binding agreement to make a qualified
18 investment or the first calendar year in which
19 the taxpayer has expended at least 10 percent
20 of the taxpayer’s qualified investment, or the
21 preceding calendar year’ for ‘during the cal-
22 endar year in which the property is placed in
23 service or during the immediately preceding 2
24 calendar years’.

1 “(C) DETERMINATION OF INDIAN UNEM-
2 PLOYMENT.—For purposes of this paragraph,
3 with respect to any Indian reservation, the In-
4 dian unemployment rate shall be based upon
5 Indians unemployed and able to work, and shall
6 be certified by the Secretary of the Interior.

7 “(6) COORDINATION WITH NONREVENUE
8 LAWS.—Any reference in this subsection to a provi-
9 sion not contained in this title shall be treated for
10 purposes of this subsection as a reference to such
11 provision as in effect on the date of the enactment
12 of this paragraph.”.

13 (2) LODGING TO QUALIFY.—Paragraph (2) of
14 section 50(b) of such Code (relating to property used
15 for lodging) is amended—

16 (A) by striking “and” at the end of sub-
17 paragraph (C),

18 (B) by striking the period at the end of
19 subparagraph (D) and inserting “; and” and

20 (C) by adding at the end thereof the fol-
21 lowing subparagraph:

22 “(E) new reservation construction prop-
23 erty.”.

24 (c) RECAPTURE.—Subsection (a) of section 50 of
25 such Code (relating to recapture in case of dispositions,

1 etc.), is amended by adding at the end thereof the follow-
2 ing new paragraph:

3 “(6) SPECIAL RULES FOR INDIAN RESERVATION
4 PROPERTY.—

5 “(A) IN GENERAL.—If, during any taxable
6 year, property with respect to which the tax-
7 payer claimed an Indian reservation credit—

8 “(i) is disposed of, or

9 “(ii) in the case of reservation per-
10 sonal property—

11 “(I) otherwise ceases to be in-
12 vestment credit property with respect
13 to the taxpayer, or

14 “(II) is removed from the Indian
15 reservation, converted or otherwise
16 ceases to be Indian reservation prop-
17 erty,

18 the tax under this chapter for such taxable year
19 shall be increased by the amount described in
20 subparagraph (B).

21 “(B) AMOUNT OF INCREASE.—The in-
22 crease in tax under subparagraph (A) shall
23 equal the aggregate decrease in the credits al-
24 lowed under section 38 by reason of section
25 48(c) for all prior taxable years which would

1 have resulted had the qualified investment
2 taken into account with respect to the property
3 been limited to an amount which bears the
4 same ratio to the qualified investment with re-
5 spect to such property as the period such prop-
6 erty was held by the taxpayer bears to the ap-
7 plicable recovery period under section 168(g).

8 “(C) COORDINATION WITH OTHER RECAP-
9 TURE PROVISIONS.—In the case of property to
10 which this paragraph applies, paragraph (1)
11 shall not apply and the rules of paragraphs (3),
12 (4), and (5) shall apply.”.

13 (d) BASIS ADJUSTMENT TO REFLECT INVESTMENT
14 CREDIT.—Paragraph (3) of section 50(c) of such Code
15 (relating to basis adjustment to investment credit prop-
16 erty) is amended by striking “energy credit or reforest-
17 ation credit” and inserting “energy credit, reforestation
18 credit or Indian reservation credit other than with respect
19 to any expenditure for new reservation construction prop-
20 erty”.

21 (e) CERTAIN GOVERNMENTAL USE PROPERTY TO
22 QUALIFY.—Paragraph (4) of section 50(b) of such Code
23 (relating to property used by governmental units or for-
24 eign persons or entities) is amended by redesignating sub-
25 paragraphs (D) and (E) as subparagraphs (E) and (F),

1 (h) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to property placed in service after
3 December 31, 1993.

4 **SEC. 3. INDIAN EMPLOYMENT CREDIT.**

5 (a) ALLOWANCE OF INDIAN EMPLOYMENT CRED-
6 IT.—Section 38(b) of the Internal Revenue Code of 1986
7 (relating to general business credits) is amended by strik-
8 ing “plus” at the end of paragraph (7), by striking the
9 period at the end of paragraph (8) and inserting “, plus”,
10 and by adding after paragraph (8) the following new para-
11 graph:

12 “(9) the Indian employment credit as deter-
13 mined under section 45A(a).”.

14 (b) AMOUNT OF INDIAN EMPLOYMENT CREDIT.—
15 Subpart D of Part IV of subchapter A of chapter 1 of
16 such Code (relating to business related credits) is amended
17 by adding at the end thereof the following new section:

18 **“SEC. 45A . INDIAN EMPLOYMENT CREDIT.**

19 “(a) AMOUNT OF CREDIT.—

20 “(1) IN GENERAL.—For purposes of section 38,
21 the amount of the Indian employment credit deter-
22 mined under this section with respect to any em-
23 ployer for any taxable year is 10 percent (30 percent
24 in the case of an employer with at least 85 percent

1 Indian employees throughout the taxable year) of
2 the sum of—

3 “(A) the qualified wages paid or incurred
4 during such taxable year, plus

5 “(B) qualified employee health insurance
6 costs paid or incurred during such taxable year.

7 In no event shall the amount of the Indian employ-
8 ment credit for any taxable year exceed the credit
9 limitation amount determined under subsection (e)
10 for such taxable year.

11 “(2) INDIAN EMPLOYEE.—For purposes of
12 paragraph (1), the term ‘Indian employee’ means an
13 employee who is an enrolled member of an Indian
14 tribe or the spouse of such a member.

15 “(b) QUALIFIED WAGES; QUALIFIED EMPLOYEE
16 HEALTH INSURANCE COSTS.—For purposes of this sec-
17 tion—

18 “(1) QUALIFIED WAGES.—

19 “(A) IN GENERAL.—The term ‘qualified
20 wages’ means any wages paid or incurred by an
21 employer for services performed by an employee
22 while such employee is a qualified employee.

23 “(B) COORDINATION WITH TARGETED
24 JOBS CREDIT.—The term ‘qualified wages’ shall
25 not include wages attributable to service ren-

1 dered during the 1-year period beginning with
2 the day the individual begins work for the em-
3 ployer if any portion of such wages is taken
4 into account in determining the credit under
5 section 51.

6 “(2) QUALIFIED EMPLOYEE HEALTH INSUR-
7 ANCE COSTS.—

8 “(A) IN GENERAL.—The term ‘qualified
9 employee health insurance costs’ means any
10 amount paid or incurred by an employer for
11 health insurance to the extent such amount is
12 attributable to coverage provided to any em-
13 ployee while such employee is a qualified em-
14 ployee.

15 “(B) EXCEPTION FOR AMOUNTS PAID
16 UNDER SALARY REDUCTION ARRANGEMENTS.—
17 No amount paid or incurred for health insur-
18 ance pursuant to a salary reduction arrange-
19 ment shall be taken into account under sub-
20 paragraph (A).

21 “(c) QUALIFIED EMPLOYEE.—For purposes of this
22 section—

23 “(1) IN GENERAL.—Except as otherwise pro-
24 vided in this subsection, the term ‘qualified em-

1 employee' means, with respect to any period, any em-
2 ployee of an employer if—

3 “(A) substantially all of the services per-
4 formed during such period by such employee for
5 such employer are performed within an Indian
6 reservation,

7 “(B) the principal place of abode of such
8 employee while performing such services is on
9 or near the reservation in which the services are
10 performed, and

11 “(C) the employee began work for such
12 employer on or after January 1, 1994.

13 “(2) CREDIT ALLOWED ONLY FOR FIRST 7
14 YEARS.—An employee shall not be treated as a
15 qualified employee for any period after the date 7
16 years after the day on which such employee first
17 began work for the employer.

18 “(3) INDIVIDUALS RECEIVING WAGES IN EX-
19 CESS OF \$30,000 NOT ELIGIBLE.—An employee shall
20 not be treated as a qualified employee for any tax-
21 able year of the employer if the total amount of the
22 wages paid or incurred by such employer to such
23 employee during such taxable year (whether or not
24 for services within an Indian reservation) exceeds
25 the amount determined at an annual rate of

1 \$30,000. The Secretary shall adjust the \$30,000
2 amount contained in the preceding sentence for
3 years beginning after 1993 at the same time and in
4 the same manner as under section 415(d).

5 “(4) EMPLOYMENT MUST BE TRADE OR BUSI-
6 NESS EMPLOYMENT.—An employee shall be treated
7 as a qualified employee for any taxable year of the
8 employer only if more than 50 percent of the wages
9 paid or incurred by the employer to such employee
10 during such taxable year are for services performed
11 in a trade or business of the employer. Any deter-
12 mination as to whether the preceding sentence ap-
13 plies with respect to any employee for any taxable
14 year shall be made without regard to subsection
15 (f)(2).

16 “(5) CERTAIN EMPLOYEES NOT ELIGIBLE.—
17 The term ‘qualified employee’ shall not include—

18 “(A) any individual described in subpara-
19 graph (A), (B), or (C) of section 51(i)(1),

20 “(B) any 5-percent owner (as defined in
21 section 416(i)(1)(B)),

22 “(C) any individual who is neither an en-
23 rolled member of an Indian tribe nor the spouse
24 of an enrolled member of an Indian tribe, and

1 “(D) any individual if the services per-
2 formed by such individual for the employer in-
3 volve the conduct of class I, II, or III gaming
4 as defined in section 4 of the Indian Gaming
5 Regulatory Act (25 U.S.C. 2703), or are per-
6 formed in a building housing such gaming
7 activity.

8 “(6) INDIAN TRIBE DEFINED.—The term ‘In-
9 dian tribe’ means any Indian tribe, band, nation,
10 pueblo, or other organized group or community, in-
11 cluding any Alaska Native village, or regional or vil-
12 lage corporation, as defined in, or established pursu-
13 ant to, the Alaska Native Claims Settlement Act (43
14 U.S.C. 1601 et seq.) which is recognized as eligible
15 for the special programs and services provided by
16 the United States to Indians because of their status
17 as Indians.

18 “(7) INDIAN RESERVATION DEFINED.—The
19 term ‘Indian reservation’ means a reservation, as de-
20 fined in—

21 “(A) section 3(d) of the Indian Financing
22 Act of 1974 (25 U.S.C. 1452(d)), or

23 “(B) section 4(10) of the Indian Child
24 Welfare Act of 1978 (25 U.S.C. 1903 (10)).

1 “(d) EARLY TERMINATION OF EMPLOYMENT BY EM-
2 PLOYER.—

3 “(1) IN GENERAL.—If the employment of any
4 employee is terminated by the taxpayer before the
5 day 1 year after the day on which such employee
6 began work for the employer—

7 “(A) no wages (or qualified employee
8 health insurance costs) with respect to such em-
9 ployee shall be taken into account under sub-
10 section (a) for the taxable year in which such
11 employment is terminated, and

12 “(B) the tax under this chapter for the
13 taxable year in which such employment is ter-
14 minated shall be increased by the aggregate
15 credits (if any) allowed under section 38(a) for
16 prior taxable years by reason of wages (or
17 qualified employee health insurance costs) taken
18 into account with respect to such employee.

19 “(2) CARRYBACKS AND CARRYOVERS AD-
20 JUSTED.—In the case of any termination of employ-
21 ment to which paragraph (1) applies, the carrybacks
22 and carryovers under section 39 shall be properly
23 adjusted.

24 “(3) SUBSECTION NOT TO APPLY IN CERTAIN
25 CASES.—

1 “(A) IN GENERAL.—Paragraph (1) shall
2 not apply to—

3 “(i) a termination of employment of
4 an employee who voluntarily leaves the em-
5 ployment of the taxpayer,

6 “(ii) a termination of employment of
7 an individual who before the close of the
8 period referred to in paragraph (1) be-
9 comes disabled to perform the services of
10 such employment unless such disability is
11 removed before the close of such period
12 and the taxpayer fails to offer reemploy-
13 ment to such individual, or

14 “(iii) a termination of employment of
15 an individual if it is determined under the
16 applicable State unemployment compensa-
17 tion law that the termination was due to
18 the misconduct of such individual.

19 “(B) CHANGES IN FORM OF BUSINESS.—
20 For purposes of paragraph (1), the employment
21 relationship between the taxpayer and an em-
22 ployee shall not be treated as terminated—

23 “(i) by a transaction to which section
24 381(a) applies if the employee continues to

1 be employed by the acquiring corporation,
2 or

3 “(ii) by reason of a mere change in
4 the form of conducting the trade or busi-
5 ness of the taxpayer if the employee con-
6 tinues to be employed in such trade or
7 business and the taxpayer retains a sub-
8 stantial interest in such trade or business.

9 “(4) SPECIAL RULE.—Any increase in tax
10 under paragraph (1) shall not be treated as a tax
11 imposed by this chapter for purposes of—

12 “(A) determining the amount of any credit
13 allowable under this chapter, and

14 “(B) determining the amount of the tax
15 imposed by section 55.

16 “(e) CREDIT LIMITATION AMOUNT.—For purposes of
17 this section—

18 “(1) CREDIT LIMITATION AMOUNT.—The credit
19 limitation amount for a taxable year shall be an
20 amount equal to the credit rate (10 or 30 percent
21 as determined under subsection (a)) multiplied by
22 the increased credit base.

23 “(2) INCREASED CREDIT BASE.—The increased
24 credit base for a taxable year shall be the excess
25 of—

1 “(A) the sum of any qualified wages and
2 qualified employee health insurance costs paid
3 or incurred by the employer during the taxable
4 year with respect to employees whose wages
5 (paid or incurred by the employer) during the
6 taxable year do not exceed the amount deter-
7 mined under paragraph (3) of subsection (c),
8 over

9 “(B) the sum of any qualified wages and
10 qualified employee health insurance costs paid
11 or incurred by the employer (or any prede-
12 cessor) during calendar year 1993 with respect
13 to employees whose wages (paid or incurred by
14 the employer or any predecessor) during 1993
15 did not exceed \$30,000.

16 “(3) SPECIAL RULE FOR SHORT TAXABLE
17 YEARS.—For any taxable year having less than 12
18 months—

19 “(A) the amounts paid or incurred by the
20 employer shall be annualized for purposes of de-
21 termining the increased credit base, and

22 “(B) the credit limitation amount shall be
23 multiplied by a fraction, the numerator of which
24 is the number of days in the taxable year and
25 the denominator of which is 365.

1 “(f) OTHER DEFINITIONS AND SPECIAL RULES.—

2 For purposes of this section—

3 “(1) WAGES.—The term ‘wages’ has the same
4 meaning given to such term in section 51.

5 “(2) CONTROLLED GROUPS.—

6 “(A) All employers treated as a single em-
7 ployer under section (a) or (b) of section 52
8 shall be treated as a single employer for pur-
9 poses of this section.

10 “(B) The credit (if any) determined under
11 this section with respect to each such employer
12 shall be its proportionate share of the wages
13 and qualified employee health insurance costs
14 giving rise to such credit.

15 “(3) CERTAIN OTHER RULES MADE APPLICA-
16 BLE.—Rules similar to the rules of section 51(k)
17 and subsections (c), (d), and (e) of section 52 shall
18 apply.

19 “(4) COORDINATION WITH NONREVENUE
20 LAWS.—Any reference in this section to a provision
21 not contained in this title shall be treated for pur-
22 poses of this section as a reference to such provision
23 as in effect on the date of the enactment of this
24 paragraph.”.

1 (c) DENIAL OF DEDUCTION FOR PORTION OF WAGES
2 EQUAL TO INDIAN EMPLOYMENT CREDIT.—

3 (1) Subsection (a) of section 280C of such Code
4 (relating to rule for targeted jobs credit) is amended
5 by striking “51(a)” and inserting “45A(a), 51(a),
6 and”.

7 (2) Subsection (c) of section 196 of such Code
8 (relating to deduction for certain unused business
9 credits) is amended by striking “and” at the end of
10 paragraph (5), by striking the period at the end of
11 paragraph (6) and inserting “, and”, and by adding
12 at the end the following new paragraph:

13 “(7) the Indian employment credit determined
14 under section 45A(a).”.

15 (d) DENIAL OF CARRYBACKS TO PREENACTMENT
16 YEARS.—Subsection (d) of section 39 of such Code is
17 amended by adding at the end thereof the following new
18 paragraph:

19 “(4) NO CARRYBACK OF SECTION 45A CREDIT
20 BEFORE ENACTMENT.—No portion of the unused
21 business credit for any taxable year which is attrib-
22 utable to the Indian employment credit determined
23 under section 45A may be carried to a taxable year
24 ending before the date of the enactment of section
25 45A.”.

1 (e) CLERICAL AMENDMENT.—The table of sections
2 for subpart D of part IV of subchapter A of chapter 1
3 of such Code is amended by adding at the end thereof
4 the following:

“Sec. 45A. Indian employment credit.”.

5 (f) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to wages paid or incurred after
7 December 31, 1993.

○

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