



Whistleblower Office

**DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Washington, DC 20224**

June 7, 2012

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MEMORANDUM FOR DISTRIBUTION FOR ALL WHISTLEBLOWER OFFICE EMPLOYEES

FROM: STEPHEN WHITLOCK *Stephen Whitlock*
Director, Whistleblower Office

SUBJECT: Updates to Internal Revenue Manual (IRM) 25.2.2 Information and Whistleblower Awards, Whistleblower Awards

This guidance will be effective August 1, 2012. We have delayed the effective date to August 1, 2012 to allow for public comment. This interim guidance memorandum is being issued to communicate changes to the Whistleblower Award Determination Administrative Proceeding. These guidelines will be incorporated into Internal Revenue Manual (IRM) sections 25.2.2 and the applicable exhibits.

The following sections of IRM 25.2.2 will be re-written as outlined in the attachment to this Interim Guidance Memorandum:

IRM 25.2.2.8
Exhibit 25.2.2-7 through 25.2.2-16
Exhibit 25.2.2-17

The following Exhibit has been added and/or renumbered:

New:

Exhibit 25.2.2-13 – Response to Preliminary Award Recommendation
Exhibit 25.2.2-16 – Waiver of Appeal

Renumbered:

Exhibit 25.2.2-14 - Determination Letter
Exhibit 25.2.2-15 - Determination Report
Exhibit 25.2.2-17 - Award Calculation Computation Guidelines

If you have any questions, please contact C. Stuart, Senior Management & Program Analyst at 631-447-4862. Comments can be forwarded to WO@irs.gov; please put control number above in the subject line.

Attachment:

Whistleblower Award Determination Administrative Proceeding
IRM Exhibit 25.2 Administrative Proceeding

Distribution:

www.IRS.gov

25.2.2.8 (06-18-2010)

Whistleblower Award Administrative Proceeding

Will be revised to read as follows:

25.2.2.8 (08-01-2012)

Whistleblower Award Determination Administrative Proceeding

- (1) After receipt of all Forms 11369 and other necessary information from the affected IRS divisions, the Whistleblower Office may begin the award determination process. The award determination administrative proceeding related to the review and determination process begins on the date that the Whistleblower Office becomes aware that there is a final determination of tax for those actions that compose the award determination.
- (2) After the statutory period for filing a claim for refund expires or there is an agreement between the taxpayer and the IRS that there has been a final determination of tax for the specific period and the right to file a claim for a refund has been waived, the Whistleblower Office will prepare an award recommendation. Prior to communicating the award recommendation to the whistleblower, a committee of the Whistleblower Executive Board will be briefed regarding the award recommendation. Upon completion of the briefing, the award recommendation will be communicated to the whistleblower in a Preliminary Award Recommendation package containing the following documents:
 - a. Preliminary Award Recommendation Letter ([Exhibit 25.2.2-7](#));
 - b. Summary Report ([Exhibit 25.2.2-8](#));
 - c. Response to Summary Report ([Exhibit 25.2.2-9](#));
 - d. Confidentiality Agreement ([Exhibit 25.2.2-10](#)).
 - e. Application for Reduced Rate of Withholding on Whistleblower Award Payment and information relating thereto. ¹

¹ Due to the importance of releasing this guidance regarding the Whistleblower Withholding Program, any all references to Application for Reduced Rate of Withholding on Whistleblower Award Payment form indicated throughout this document is only to the draft, which is still being developed.

(3) Whistleblowers are given 30 days to respond to the Summary Report. The whistleblower can respond in one of four ways with the resulting consequences:

1. If the whistleblower takes no action, then the determining official of the Whistleblower Office will make an award determination.
2. If the whistleblower signs, dates, and returns the Response to Summary Report agreeing to the preliminary award recommendation, accepting it as the award determination and waiving the right to appeal the award determination to the United States Tax Court, then the Whistleblower Office will begin award payment procedures under IRM 25.2.2.13 as promptly as possible.
3. If the whistleblower submits comments on the Summary Report but does not sign, date, and return the Confidentiality Agreement, the comments will be added to the administrative claim file and reviewed for purposes of making an award determination, then the determining official of the Whistleblower Office will make an award determination.
4. If the whistleblower signs, dates, and returns the Confidentiality Agreement, then the Whistleblower Office will provide the whistleblower with additional information underlying the award recommendation and the administrative review opportunity described below.

The Summary Report states the amount of the recommended award and provides a brief explanation (one or two paragraphs) of the recommended award. The report will include the recommended amount of collected proceeds to be attributed to the whistleblower information, the recommended award percentage and the recommended award amount, and a brief summary of the factors the WBO considered in reaching the award percentage recommendation. The Summary Report will discuss how the information provided affected the opening, expansion or continuation of an audit. The report may also discuss such factors as the quality of the organization of the information provided and the quality of any factual and/or legal analysis provided. The report will discuss the presence of positive factors that warrant an increase in the award percentage and the presence of any negative factors that warrant a decrease in the award percentage. The report will contain a statement of the award percentage warranted, taking into account the extent to which the information provided substantially contributed to actions by the IRS.

(4) If the whistleblower signs, dates, and returns the Confidentiality Agreement, then the Whistleblower Office will provide the whistleblower with the following documents:

- a. Detailed Report Letter (Exhibit 25.2.2-11);
- b. Detailed Report (Exhibit 25.2.2-12); and
- c. Response to Detailed Report (Exhibit 25.2.2-13).

The Detailed Report Letter contains instructions on scheduling an appointment for the whistleblower (and the whistleblower's representative, if there is one) to review the documents supporting the recommendation. If scheduled, this review will take place at the Whistleblower Office in Washington, D.C., unless the Whistleblower Office, in its sole discretion, decides to hold the meeting at another location. The Whistleblower Office will supervise the review of the documents and whistleblowers will not be permitted to make copies of the documents.

(5) Whistleblowers are given 30 days to respond to the Detailed Report. The whistleblower can respond in one of three ways with the resulting consequences:

- a. If the whistleblower takes no action, then the determining official of the Whistleblower Office will make an award determination.
- b. If the whistleblower schedules an appointment to review the documents supporting the recommendation, then the whistleblower will have 30 days from the date of the meeting to provide written comments to the Whistleblower Office.
 - i. If no written comments are submitted to the Whistleblower Office, then the determining official of the Whistleblower Office will make an award determination.
 - ii. If written comments are submitted to the Whistleblower Office, the written comments will be reviewed for purposes of making an award determination; then the determining official of the Whistleblower Office will make an award determination.
- c. If the whistleblower does not schedule an appointment but does submit written comments on the Detailed Report, the comments will be reviewed for purposes of making an award determination; then the determining official of the Whistleblower Office will make an award determination.

The Detailed Report states the amount of the recommended award and provides a detailed explanation of the recommended award. The report includes the recommended amount of proceeds to be attributed to the whistleblower information, the recommended award percentage, the recommended award amount, and a detailed explanation of the factors considered in making the award percentage recommendation. The report discusses the whistleblower's submission, how the provided information was used by the Service and why it was helpful, the collected proceeds based on the information provided, an award percentage analysis and a determination of award amount.

- (6) A violation of the terms of the confidentiality agreement may be considered a negative factor in determining the specific award percentage, and may result in reduction of the award percentage to the minimum required by law.
- (7) All correspondence sent by the Whistleblower Office to a whistleblower during the administrative award proceeding as well as all correspondence, including written comments, received by the Whistleblower Office from the whistleblower in response to such correspondence will become part of the administrative claim file.
- (8) The determining official of the Whistleblower Office will make the award determination based on a review of the administrative claim file. If the award determination amount differs substantially from the recommended amount, prior to communicating the award determination to the whistleblower, the committee of the Whistleblower Executive Board will again be briefed. After the briefing, the Whistleblower Office determination will be communicated to the whistleblower in a determination letter package containing the following documents:
 - a. Determination Letter (Exhibit 25.2.2-14)
 - b. Determination Report (Exhibit 25.2.2-15)
 - c. Determination – Waiver of Appeal (Exhibit 25.2.2-16)

The Determination Report re-states the information provided in the Summary Report and, if applicable, includes a discussion addressing any comments made by the whistleblower during the award determination administrative proceeding.

The Determination Letter will advise the whistleblower of the right to seek review of the determination by the United States Tax Court (Tax Court) within 30 days of the date of the determination letter.

- (9) The Whistleblower Office will initiate payment actions when the period for seeking Tax Court review has lapsed, when the whistleblower notifies the Whistleblower Office that the right to seek review has been waived, or when the Tax Court has issued a decision and all further judicial appeals have been waived or exhausted.

(10) The Preliminary Award Recommendation package, the Summary Report, the Detailed Report and the Determination Letter package, as described above, will contain taxpayer return information. The Whistleblower Office is authorized to disclose this taxpayer return information, within the administrative proceeding as described above, under I.R.C. § 6103(h) (4).

Exhibit 25.2.2-7 (08-01-2012)
Preliminary Award Recommendation Letter

Whistleblower Name
Address

Re: Claim Number(s):

Dear Whistleblower:

We have enclosed a Summary Report that explains our preliminary award recommendation in your case.

If you agree with the preliminary award recommendation:

1. Check the appropriate box, sign and date the enclosed Response to Summary Report form indicating your agreement; and
2. Return the signed form to us.

After we receive the signed form, the Whistleblower Office will process the award for payment.

The award is taxable income and federal withholding tax will be deducted from the award amount. In addition, if you have any outstanding federal tax liabilities (including interest and penalties), the award amount will be applied to the amount you owe and any remaining balance will be paid to you. You must report the total award amount on your income tax return even if any amounts are applied to outstanding tax liabilities. A Form 1099 will be sent to you that will report the full amount of the award and the amount of the taxes withheld.

If you do not agree with the preliminary award recommendation and would like to comment without reviewing additional information from our file:

1. Check the appropriate box, sign and date the Response to Summary Report form; and
2. Return the signed form and your comments to us within 30 days from the date of this letter.

After we receive your signed form and your comments, the determining official of the Whistleblower Office will make a determination in your case. Any comments regarding the preliminary award recommendation that we receive will be considered

in the making of the determination of your award.

If you do not agree with the preliminary award recommendation and would like to review additional information from our file before you comment:

1. Check the appropriate box, sign and date the Response to Summary Report form;
2. Sign and date the enclosed Confidentiality Agreement; and
3. Return the signed form and the signed Confidentiality Agreement to us within 30 days of the date of this letter.

If you return the Response to Summary Report form and signed Confidentiality Agreement to us within 30 days of the date of this letter, we will provide additional information that explains the basis for the recommendation in greater detail. You will also receive an opportunity to review the documents that support the recommendation. When we send you the additional information we will include information explaining how to schedule an appointment to review the supporting documents. The review of the records must take place at the Whistleblower Office in Washington, DC and you will not be permitted to make copies of the records. You will be given an opportunity to submit comments on the award recommendation after you receive the additional information and/or after you review the supporting documents (if you choose to do so). The determining official of the Whistleblower Office will not make an award determination in your case until at least 30 days after you have received the additional information and/or reviewed the supporting documents (if you choose to do so). Any comments received from you will be considered in making the determination of your award.

Any documents described above including the signed and dated Response to Summary Report, the signed and dated Confidentiality Agreement, and comments must be mailed to:

Internal Revenue Service, Whistleblower Office, SE: WO, 1111 Constitution Avenue, NW, Washington DC 20224

If you take no action in response to this letter within 30 days, the determining official of the Whistleblower Office will make a determination of the award.

After the determining official of the Whistleblower Office makes a determination, you may appeal the determination by filing a petition with the United States Tax Court within 30 days of the date of the determination. The right to seek Tax Court review of the Director's determination is not affected by the choice you make regarding whether to participate in the administrative proceeding.

If you have any questions about this letter, you may write to [Analyst Name] at the Whistleblower Office address above, or call him/her at [Analyst Phone Number]. If

you write, please include your telephone number and the best time to call you if we need more information.

Sincerely,

cc: POA (if applicable)

Enclosures: Summary Report

Confidentiality Agreement

Response to Summary Report

Application for Reduced Rate of Withholding on Whistleblower Award Program with Frequently Asked Questions¹

¹ Exhibit 25.2.2-7 Due to the importance of releasing this guidance regarding the WB Withholding Program, the Application for Reduced Rate of Withholding on Whistleblower Award Payment form indicated above is still under development.

Exhibit 25.2.2-8 (08-01-2012)
Summary Report

Summary Report

Whistleblower Name: _____

Whistleblower Office Claim Number(s): _____

Collected proceeds based on information provided by whistleblower _____

Recommended award percentage _____

Recommended award amount _____

This award recommendation is made under I.R.C. § 7623(b).

(Brief description of the factors considered in reaching the preliminary award recommendation percentage.)

Exhibit 25.2.2-9 (08-01-2012)
Response to Summary Report

Response to Summary Report

Whistleblower Office Claim Number(s): _____

Name and Address of Whistleblower: _____

Name and Address of Representative [if applicable]: _____

After receipt of a summary report of the preliminary award recommendation under I.R.C. § 7623(b) from the Whistleblower Office, dated _____,

I agree with the preliminary award recommendation and accept it as the award determination. I waive all my administrative and judicial appeal rights with respect to the award determination, including my right to petition the United States Tax Court.

I disagree with the preliminary award recommendation. I understand that if I wish to provide comments regarding the Summary Report such comments must be submitted within 30 days of the date of the letter transmitting the Summary Award.

I wish to receive a more detailed explanation of the award recommendation, and may choose to review the supporting documents. I understand that I and/or my representative will be permitted to review the supporting documents at the Whistleblower Office in Washington DC, and that I/we may not copy the supporting documents. I further understand that I must submit comments or indicate my intention to review the supporting documents within 30 days of date of the letter transmitting the detailed explanation. I have attached the Confidentiality Agreement provided signed by my representative, if applicable, and myself.

Whistleblower signature _____

Date:

Whistleblower representative signature _____

Date:

**Exhibit 25.2.2-10 (08-01-2012)
Confidentiality Agreement**

Confidentiality Agreement

Whistleblower Name: _____

Whistleblower Office Claim Number(s): _____

I, (name of whistleblower/representative), have received notice from the IRS of the preliminary award recommendation in the case initiated by my (my client's) submission of a claim for award under I.R.C. § 7623. I wish to participate in the award determination administrative proceeding leading to the determination of an award by a determining official of the Whistleblower Office in this case, by reviewing additional information related to the award recommendation. I understand that information will not be disclosed to me unless the disclosure is necessary as part of the award determination administrative proceeding, and unless I agree to maintain the confidentiality of any information on taxpayers other than myself (my client) disclosed to me. I agree that I will use any information disclosed to me (my client) by the Whistleblower Office only for the purpose of preparing comments on the award recommendation to the Whistleblower Office, or in appealing the determination by petitioning the United States Tax Court. I understand that use of any information disclosed to me (my client) for any other purpose may be considered a negative factor in determining the award payable under I.R.C. § 7623, and may result in a reduction of the award (but not less than the minimum award required by law). This agreement applies to any information disclosed as part of the award determination administrative proceeding leading to the determination by the determining official of the Whistleblower Office, including information contained in Detailed Report or any other information made available for my review by the IRS Whistleblower Office. Any disclosures made in connection with a request for review of the determination by the United States Tax Court, including re-disclosure of information previously disclosed as part of the award determination administrative proceeding, will be governed by the rules of the court.

Whistleblower Signature

Date

Whistleblower Representative Signature

Date:

Exhibit 25.2.2-11 (08-01-2012)
Detailed Report Letter

Whistleblower Name
Address

Re: Claim Number(s):

Dear Whistleblower:

As requested, attached is a Detailed Report that provides greater detail regarding our proposed award recommendation in your case.

If you agree with the proposed award recommendation:

1. Check the appropriate box, sign and date the enclosed Response to Detailed Report form indicating your agreement; and
2. Return the signed form to us.

After we receive the signed Response to Detailed Report form, the Whistleblower Office will process the award for payment.

The award is taxable income and federal withholding tax will be deducted from the award amount. In addition, if you have any outstanding federal tax liabilities (including interest and penalties), the award amount will be applied to the amount you owe and any remaining balance will be paid to you. You must report the total award amount on your income tax return even if any amounts are applied to outstanding tax liabilities. A Form 1099 will be sent to you that will report the full amount of the award and the amount of the taxes withheld.

If you do not agree with the preliminary award recommendation and would like to comment without reviewing additional information from our file:

1. Check the appropriate box, sign and date the Response to Detailed Report form; and
2. Return the signed form and your comments to us within 30 days.

After we receive the form and your comments, the determining official of the Whistleblower Office will make an award determination in your case. Any comments regarding the award report that we receive from you will be considered in the making of the determination of your award.

If you do not agree with the preliminary award recommendation and would like to review additional documents in our file before you comment:

1. Check the appropriate box, sign and date the Response to Detailed Report form, and
2. Return the signed form to us within 30 days of the date of this letter.

After the form is received, we will contact you to schedule an appointment.

You will be given an opportunity to submit comments on the award recommendation after you receive the additional information and after you review the supporting documents. Any comments received from you after the review will be considered in the making of the determination of your award.

All documents described must be mailed to:

IRS Whistleblower Office, SE: WO, 1111 Constitution Avenue, NW, Washington DC 20224

If you take no action in response to this letter within 30 days, the determining official of the Whistleblower Office will make a determination of the award.

After the determining official of the Whistleblower Office makes a determination, you may appeal the determination by filing a petition with the United States Tax Court within 30 days of the date of the award determination. The right to seek Tax Court review of the determination is not affected by the choice you make regarding whether to participate in the administrative proceeding.

If you have any questions about this letter, you may write to [Analyst Name] at the IRS Whistleblower Office address above, or call him/her at [Analyst Phone Number]. If you write, please include your telephone number and the best time to call you if we need more information.

Sincerely,

cc: POA (if applicable)

Enclosures: Detailed Report

Response to Detailed Report

Exhibit 25.2.2-12 (08-01-2012)
Detailed Report

Detailed Report

Whistleblower Name: _____

Whistleblower Office Claim Number(s): _____

1. The Whistleblower's Submission

a.

2. Audit Team Action on the Information Provided

a.

3. Collected Proceeds Based on Whistleblower Information*

***A computation of the collected proceeds will be provided**

4. Award Percentage Analysis

a.

5. Determination of Award Amount

| | |
|---|--|
| a. Total Collected Proceeds Attributable to the Whistleblower | |
| b. Recommended Award Percent | |
| c. Recommended Award (a. multiplied by b.) | |

Exhibit 25.2.2-13 (08-01-2012)
Response to Detailed Report

Response to Detailed Report

Whistleblower Office Claim Number(s): _____

Name and Address of Whistleblower : _____

Name and Address of Representative [if applicable]: _____

After receipt of the detailed report of the preliminary award recommendation under I.R.C. § 7623(b) from the IRS Whistleblower Office, dated _____,

I agree with the preliminary award recommendation and accept it as the award determination. I waive all my administrative and judicial appeal rights with respect to the award determination, including my right to petition the United States Tax Court.

I disagree with the preliminary award recommendation. I understand that if I wish to provide comments regarding the Detailed Report such comments must be submitted within 30 days of the date of the letter transmitting the Detailed Report.

I wish to schedule an appointment to review the supporting documents. I understand that I and/or my representative will be permitted to review the supporting documents at the Whistleblower Office in Washington DC, and that I/we may not copy the supporting documents. I further understand that I must submit comments within 30 days of the date of the review appointment.

Whistleblower signature _____

Date:

Whistleblower representative signature _____

Date:

Exhibit 25.2.2-14 (08-01-2012)
Determination Letter

Date:

WB Name & Address

YOU HAVE 30 DAYS FROM THE DATE OF THIS LETTER TO FILE A PETITION WITH THE UNITED STATES TAX COURT

Dear Whistleblower;

We have determined that you are entitled to an award of \$XXXX UNDER I.R.C. § 7623(b). This letter is the determination, as required by law. The enclosed Determination Report explains the determination and the calculation of the award.

If you want to contest this determination in court, you have 30 days from the date of this letter to file a petition with the United States Tax Court appealing the determination. You can get a copy of the rules for filing a petition and a petition form you can use by writing to the address below:

United States Tax Court
400 Second Street, NW,
Washington, DC 20217

You can also get this information from the Tax Court's internet site at <http://www.ustaxcourt.gov>.

If you decide to file an appeal, submit to the Tax Court at the above address the completed petition form, a copy of this letter and a copy all attachments to this letter. The Tax Court cannot consider your case if the appeal is filed late. The time you have to file a petition is set by law and cannot be extended or suspended. Thus, contacting the IRS for more information, or receiving other correspondence from the IRS, will not change the allowable period for filing a petition with the Tax Court.

You may represent yourself before the Tax Court, or you may be represented by anyone admitted to practice before the Tax Court.

If you decide not to file a petition with the Tax Court, please sign the enclosed waiver form and return it at the following address:

IRS Whistleblower Office, SE: WO
1111 Constitution Avenue, NW
Washington, DC 20224

This will allow us to begin processing the award payment, and can help get the payment to you more quickly.

If you decide not to sign and return the waiver, and you do not file an appeal with the Tax Court within the time limit, we will begin processing the award payment 15 days after the time limit expires. If you file a petition with the Tax Court, appealing the determination, we cannot begin the payment process until the Tax Court makes a decision and any further judicial review has concluded or been waived.

The award is taxable income and federal withholding tax will be deducted from the award amount. In addition, if you have any outstanding federal tax liabilities (including interest and penalties), the award will be applied to the amount you owe and any remaining balance will be paid to you. You must report the total award amount on your income tax return even if any amounts were applied to outstanding liabilities. A Form 1099 will be sent to you that will report the full amount of the award and the amount of taxes withheld.

If you have questions about this letter, you may write to [name] at the IRS Whistleblower Office address above, or call him/her at [phone number]. If you write, please include your telephone number and the best time to call you if we need more information.

Sincerely,

Director, Whistleblower Office

cc: POA (if applicable)

Attachments: Determination Report
Determination – Waiver of Appeal

Exhibit 25.2.2-15 (08-01-2012)

Determination Report

Determination Report

Whistleblower Office Claim Number(s): _____

Name and Address of Whistleblower: _____

Name and Address of Representative [if applicable]: _____

Collected proceeds based on information provided by Whistleblower: _____

Determined award percent: _____

Determined award amount: _____

This award determination is made under I.R.C. § 7623(b).

Explanation:

Exhibit 25.2.2-16 (08-01-2012)

Determination - Waiver of Appeal

Determination - Waiver of Appeal

Whistleblower Office Claim Number(s): _____

Name and Address of Whistleblower: _____

Name and Address of Representative [if applicable]: _____

After receipt of the Determination letter under I.R.C. § 7623 from the determining official of the Whistleblower Office, dated [date], I waive my right to appeal the determination to the United States Tax Court.

Whistleblower signature

Date

Whistleblower Representative signature

Date

Award Calculation Computation Guidelines

For Submissions before August 26, 1997, calculate as follows:

| FOR | THEN | Dollar Limitation not to exceed |
|--|---|---------------------------------|
| Specific and responsible information which caused the investigation in recovery of taxes, penalties and fines. | 10 % first \$75,000 5 % next \$ 25,000 1 % any additional recovery | \$ 100,000 |
| Information (not specific) which caused the examination as was of value in determining tax liabilities, and for information which was a direct factor in recovery of taxes, penalties and fines (although such information did not start the investigation). | 5 % first \$75,000 2 ¹ / 2 % next \$ 25,000 1 / 2% any additional recovery | \$ 100,000 |
| Information that caused the investigation but was of no value in determining tax liability. | 1 % first \$75,000 1 / 2% any additional recovery | \$ 100,000 |

For Submission on or after August 26, 1997 but before August 13, 2004 calculate as follows:

| FOR | THEN | Dollar Limitation not to exceed: |
|--|------|----------------------------------|
| Specific and responsible information which caused the investigation in recovery of taxes, penalties and fines. | 15% | \$ 2 million |
| Information that caused the investigation and was of value in the determination of tax liabilities although | 10% | \$ 2 million |

| | | |
|---|----|--------------|
| not specific. | | |
| Information that caused the investigation but had no direct relationship to the determination of tax liabilities. | 1% | \$ 2 million |

For Submissions on or after August 13, 2004, calculate as follows:

| FOR | THEN | Dollar Limitation not to exceed: |
|---|-------------|---|
| Specific and responsible information which caused the investigation in recovery of taxes, penalties and fines. | 15% | \$ 10 million |
| Information that caused the investigation and was of value in the determination of tax liabilities although not specific. | 10% | \$ 10 million |
| Information that caused the investigation but had no direct relationship to the determination of tax liabilities. | 1% | \$ 10 million |

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