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Via Email to: Scott.Peterson@sstgb.org

Streamlined Sales Tax Governing Board
Compliance Review and Interpretations Committee
Attn: Scott C. Peterson, Executive Director
4205 Hillsboro Pike, Suite 305
Nashville, Tennessee 37215

Re: Public Comment to CRIC Recertification Review of Washington

Dear Committee Members:

On May 18, 2009, Washington enacted H.B. 2075 related to the excise taxation of electronically delivered products (digital products). 2009 Wa. Ch. 535. This legislation became effective July 26, 2009. *See* Wa. Const., Art. II, § 41. The legislation provides in pertinent part as follows:

[Sec. 502.] A new section is added to chapter 82.08 RCW to read as follows:

(1) Except as provided in subsection (2) of this section, the tax imposed by RCW 82.08.020 does not apply to sales of audio or video programming by a radio or television broadcaster.

(2)(a) Except as provided in (b) of this subsection, the exemption provided in subsection (1) of this section does not apply in respect to programming that is sold on a pay-per-program basis or that allows the buyer to access a library of programs at any time for a specific charge for that service.

(b) Notwithstanding (a) of this subsection, the exemption provided in this section applies to the sale of programming described in (a) of this subsection if the seller is subject to a franchise fee in this state under the authority of Title 47 U.S.C. Sec. 542(a) on the gross revenue derived from the sale.

(3) For purposes of this section, "radio or television broadcaster" includes satellite radio providers, satellite television providers, cable television providers, and providers of subscription internet television.

2009 Wa. Ch. 535 § 502. This provision provides for an exemption from excise tax for sales of audio or video programming, with an exception for pay-per-programs, which are taxable unless the seller is a cable operator. *See* Title 47 U.S.C. Sec. 542(a). Since cable operators, and not satellite operators or other providers, are entitled to an exemption on pay-per-program programming, the Entity-Based Exemption established by this legislation is in direct conflict with Section 316.C. of the Streamlined Sales and Use Tax Agreement (the "Agreement").

Therefore, it is respectfully submitted that the Compliance Review and Interpretations Committee should find that this legislation renders Washington out of compliance with the Agreement.

Sincerely,

AKERMAN SENTERFITT



H. Timothy Gillis