



STATE OF WASHINGTON
DEPARTMENT OF REVENUE
OFFICE OF THE DIRECTOR

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December 1, 2009

Compliance Review and Interpretations Committee
Streamlined Sale Tax Governing Board
4205 Hillsboro Pike, Suite 305
Nashville, Tennessee 37215-3339

Dear Committee Members:

On November 18, 2009, Mr. Timothy Gillis sent a follow-up letter to Washington's timely submitted state response to the Compliance Review and Interpretations Committee (CRIC). This submission was in addition to Mr. Gillis' original letter submitted at the end of the public comment period on October 26, 2009. Mr. Gillis provided the letter to elaborate on his concerns in anticipation of the CRIC call scheduled for November 19, 2009.

It is unclear why Mr. Gillis failed to address his additional concerns in the October 26th letter and moreover why he sent the November 18th letter with less than 24 hours advance notice to the CRIC and Washington. While we did address the concerns expressed in the November 18th letter during our remarks at the November 19th CRIC meeting, Mr. Gillis' letter was disseminated and we wish to respond in writing. We briefly respond to the CRIC as follows:

- Under the plain language of SSUTA member states may enact entity-based exemptions for undefined items included within a defined product pursuant to Section 316 C (3). States have greater flexibility in enacting entity-based exemptions than with product-based exemptions under Section 316 C. States have this greater flexibility, in part, because there is a lesser burden on sellers in administering these exemptions. This idea is supported by statements made by Walter Hellerstein on entity-based exemptions under the SSUTA. *See Hellerstein, State Taxation, Part V, Chapter 19A.*
- Washington's exemption was enacted consistent with Section 316 C (3) as described in our Response submitted on October 26, 2009.
- SSUTA 316 C (2) does not apply because the described programming is a subset of "digital audio-visual works" and "digital audio works." Therefore, any focus on SSUTA Sections 316 C (2), and in relation 327 C and 332 F, is not appropriate.

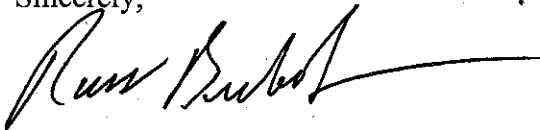
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- Mr. Gillis' assertions would lead to the absurd result of negating the very existence of Section 316 C (3) because no item within a defined product category could ever be treated differently than the defined product category for entity-based exemptions.
- Washington's exemption is compliant with the purpose and plain language of the SSUTA.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Russ Brubaker", with a long horizontal flourish extending to the right.

Russ Brubaker
Senior Assistant Director of Tax Policy

cc: Scott Peterson, Executive Director, Streamlined Sales and Use Tax Governing Board