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CLIA Alaska Challenges Juneau Passenger Entry Fee, Cites \$10 million Artificial Island Project as Unconstitutional

(ANCHORAGE, April 12, 2016) – CLIA Alaska and international affiliate, Cruise Lines International Association, have filed a complaint for declaratory and injunctive relief against the City and Borough of Juneau (CBJ) over the legality of taxes imposed on cruise passengers as a condition of their visit to Juneau and how the borough spends that money. The legal challenge is intended to resolve a long standing disagreement between the industry and the CBJ regarding the interpretation of the U.S. Constitution and federal restrictions on the use of passenger entry fee taxes.

The cruise industry makes a substantial positive contribution to the State and local economies in Alaska. "Cruise line passengers currently pay approximately 18%-20% of all sales taxes generated in Juneau; the industry certainly does not have an issue with paying taxes or contributing to local services", said John Binkley, president of CLIA Alaska. "However, the U.S. Constitution is clear that per passenger entry fees are prohibited unless they meet a very narrow list of exceptions, none of which apply to this situation. For example, Juneau's \$10 million artificial island, whale sculpture foundation and bridge park project fall well beyond those legal limits."

CLIA Alaska objected on numerous occasions to the artificial island project as well as other projects which do not provide a direct benefit to the passengers paying for those projects and the vessel that transports them. CLIA Alaska notes it is not about the projects, but about the source of the funds for the projects. If the community feels strongly about a particular project, sales taxes or other revenue sources are appropriate, according to CLIA. Projects of general community benefit cannot be funded by one mode of transportation such as the per passenger entry fees.

The complaint argues that CBJ is violating the U.S. Tonnage Clause, U.S. Commerce Clause, and federal law, which ban all charges “for the privilege of entering, trading in, or lying in a port;” that the taxes do “not bear a reasonable relation to the actual cost of services” provided by Juneau; and have been used to fund projects “that provide no direct benefits to the passengers who actually pay the fee and to the vessels that transport the passengers.”

“The founders of our country decided from the beginning that citizens of the United States were to be free to travel and do business from state to state without a toll booth being set up at every state border or municipal boundary you cross,” Binkley said. “The legal arguments are complicated but just as Seattle could not charge an entry fee tax on all air passengers flying in from Alaska to fund the building of an island, it is not legal for Juneau to expect only cruise visitors do so either.”

Juneau has received more than \$55 million in entry fee taxes in just the past four years, an amount that greatly exceeds the value of services Juneau provides to the ships and their passengers. “The revenues generated by the entry fees exceed by a large margin the amount reasonably necessary to compensate CBJ for expenditures for direct services used by the cruise line vessels and their passengers,” thereby imposing a burden on interstate commerce, the complaint states.

In addition to the artificial island project, the complaint lists a number of other expenditures over the years that do not meet the criteria mandated by law, including \$22 million to fund CBJ general government operating expenses; \$594,000 for the Juneau airport; and \$447,000 for upgrades to a private dock that CLIA cruise vessels and passengers cannot use.

“Filing suit was a difficult decision for us,” Binkley said. “Juneau is a great port and a community of people who take excellent care of our guests. In turn, it’s important that we ensure that the fees our guests pay to visit Juneau are used in a responsible and legal way. We are hopeful the Courts will provide guidance on this issue, so that the industry and the City and Borough of Juneau can gain alignment and have clear rules going forward.”

A copy of the complaint is posted here.

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