

# Cruise industry's Juneau lawsuit could set wider precedent



By Jacob Resneck, KTOO | November 1, 2017 | Juneau , Local Government , Southeast , Tourism



Passengers walk a downtown Juneau dock where three cruise ships are tied up June 11, 2017. (Photo by Ed Schoenfeld/CoastAlaska News)

A [federal lawsuit](#) brought by the cruise ship industry against the City and Borough of Juneau says its passenger head tax is unconstitutional.

If the industry prevails it could impact the statewide passenger fee. Exhibit KX  
Page 1 of 6

After a 18 months of litigation and at least \$498,000 spent by the city in legal costs, the two sides are no closer to a resolution.

“We don’t dispute the collection of the fees. We don’t dispute those at all, it’s just the expenditures,” said John Binkley, president of [Cruise Lines International Association Alaska](#), the industry group [suing the city over how it spends the \\$8-per-passenger fee](#) it collects.

He says the passenger and port development fees, are required by federal law to support cruise ship operations, not fund local vanity projects.

“And the city disagrees,” Binkley said. “They say it can be spent on things like the artificial island it built, the [Whale Park](#), the airport or pretty much anything else it wants.”

The city argues that the industry reads the law too narrowly.

One example is seasonal crossing guards near the cruise docks; the city [uses passenger fees to pay for them](#).

“We have [a million people getting off the ships](#) in the summer,” said City Attorney Amy Mead. “We think that crossing guards provide a service to the passengers because it enhances their safety and CLIA would disagree with that.”

But Binkley said his industry’s position is these fees are for port infrastructure – [like a dock](#).

“Any of that money collected must be spent on a service to the ship because it’s a fee on the ship,” Binkley said.

(Actually, it’s a fee on the passenger that’s paid by the passenger. But that’s the gist of the dispute.)

In a [filing last month](#), the cruise industry upped the ante. It asserts Juneau’s passenger fees are unconstitutional. It points to the [Commerce Clause](#) and [Tonnage Clause](#), both of which give Congress the sole authority to regulate interstate commerce.

Mead said that shows the industry is seeking a ruling with a wider precedent.

“If it were just a Juneau case, their motion would be tied to very specific expenditures and this case would all be about very specific expenditures,” she said. “That is not how CLIA has fashioned this lawsuit. They challenge the constitutionality of the fees.”



*A cruise ship is docked at Ketchikan's downtown Berth 2. (Photo by Leila Kheiry/KRBD)*

The cruise industry opposed past citizen-led referendums in Juneau and statewide that created the head taxes.

An industry lawsuit against the state's head tax was settled in 2010 after the Legislature slashed the passenger fee by 25 percent.

That seemed to settle the issue, but state lawyers are still watching the Juneau case with interest.

Juneau's local law closely mirrors the state's law – so precedent matters.

“By challenging the underlying constitutionality of a tax on cruise ship passengers, a victory by CLIA would establish a precedent,” Assistant Attorney General Chris Peloso said. “That could be useful in a future challenge against similar taxes levied by other municipalities, like Ketchikan, or a challenge against the state [Commercial Passenger Vessel Excise Tax](#).”

In other words, it could open the flood gates to fresh challenges.

The cruise industry insists that's not its aim. If the judge overturns Juneau's passenger fees, Binkley said the industry would continue to pay the full amount to the state. And he says more funding might be available for other Southeast ports-of-call.

“The resources, we feel, are being not properly spent in Juneau, when they should be spent on port infrastructure in other, smaller communities,” Binkley said.

The Attorney General's office hasn't gotten involved.

Exhibit KX  
Page 3 of 6

Case 1:16-cv-00008-HRH Document 129-24 Filed 02/09/18 Page 3 of 6

CBJ198964

But if the cruise industry's lawsuit challenges the state's passenger fee, Peloso said, the state would intervene.



Recent headlines

Woman injured in motor vehicle accident out the road

54-year-old Juneau woman was taken to the Bartlett Regional Hospital after a single vehicle accident Friday afternoon near 22-mile Glacier Highway

Fire destroys Juneau house on New Year's Eve

The house at the 9000 block of Carrol Place is a total loss



Less than an hour into 2018, Anchorage records first homicide

At about 12:16 a.m. New Year's Day, Anchorage police responded to shots fired in downtown



Watch: Juneau New Year's Polar Bear Dip 2018

On New Year's Day, a group of brave souls continued the Juneau tradition of plunging into the icy cold water at Auke Recreation Picnic Area

Home

Donste

Related articles



Juneau's cruise ship head tax spending pitches due next week

Typically, the city receives dozens of pitches for things like seasonal emergency services personnel, waterfront infrastructure improvements, crossing guards and more public restroom cleaning and maintenance.

Assembly reviews proposed changes to marine passenger fee code

Assembly reviews proposed changes to marine passenger fee code

The Juneau Assembly is set to move forward with "housekeeping" changes to the city's Marine Passenger Fee code. The five-dollar per head fee for cruise ship travelers was enacted by Juneau voters in 1999, before Congress passed the most recent federal law governing how such money can be spent.



Juneau Assembly weighs \$5.2 million passenger fee plan

The Juneau Assembly will soon decide how it will spend \$5.2 million in fees collected from cruise ship passengers. Not every request has been funded - including \$400,000 from Bartlett Regional Hospital.



Juneau exempts cruise ships from sales tax, then tees up \$100,000 in sales tax for cruise industry lawsuit

Separate from the sales tax exemption, the Juneau Assembly had its first reading on an ordinance to earmark sales tax revenue to keep paying lawyers retained to fight the cr

# Upcoming Events

## JANUARY

No Events

## FEBRUARY

**03** 2018 SEAFOOD FESTIVAL  
FEB PRESENTED BY KTOO AND TAKU FISHERIES

**PAULA POUNDSTONE**




**MARCH 8TH CENTENNIAL HALL 7PM**

FOLLOW PAULA AT [PAULAPOUNDSTONE.COM](http://PAULAPOUNDSTONE.COM)  

PURCHASE TICKETS AT KTOO, THE JACL AND ONLINE AT [KTOO.ORG](http://KTOO.ORG) OR AT 907.586.1670

 & 

**SEAFOOD FESTIVAL**

**FEB 3**  
**CENTENNIAL HALL**



Exhibit KX  
Page 5 of 6

CBJ198966



Support great content like this by becoming a member.

SIGN UP

HOW TO SUPPORT KTOO

- Contribute
- Sponsorship
- Summit Club
- Summit Members
- Sustaining Membership
- Legacy Foundation
- Membership FAQs

KTOO LINKS

- About
- KTOO Board of Directors
- Community Advisory Board
- Staff
- Careers

Exhibit KX  
Page 6 of 6

CBJ198967