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Florida Dep't of Revenue v. New Sea Escape Cruises, Ltd.

FLORIDA DEPARTMENT OF REVENUE VERSUS KNEW SEA ESCAPE CRUISES LIMITED.

GOOD MORNING AND IF YOU'RE RAEDY TO PROCEED, YOU MAY PROCEED.

GOOD MORNING YOUR HONOR, MAY IT PLEASE THIS HONORABLE COURT, NICHOLAS BYKOWSKY, ASSISTANT ATTORNEY GENERAL REPRESENTING THE DEPARTMENT OF REVENUE, ALSO WITH ME IS MY COKAU MAUR THAT BETTER RARE ROW. THIS IS AN IMPORTANT CASE BEFORE THE COURT. THE COURT MUST LOOK AT THREE INCONSISTENT DECISIONS FROM TWO DISTRICT COURT OF APPEALS, WHICH VARYING APPLY THE PARTIAL EXEMPTION OF 212 POINT O PAREN 8 FLORIDA STATUTES. IT IS IMPORTANT TO REMEMBER THIS IS A PORTION EMPEFERPTION AND THE PURPOSE OF THIS PARTIAL EXEMPTION IS TO ADDRESS FOREIGN COMMERCE CONCERNS. THE CORE ISSUE IN THIS CASE BEFORE THE COURT AND WHICH WAS ALSO RAISED IN THE RELATED DREAM BOAT CASE FROM THE FIRST DISTRICT AND THE RECENT DEERBROOKE CASE WHICH WAS DECIDED SEPTEMBER 10, IS THIS. IT IS A GAMBLING SHUP CRUISE TO NOWHERE, PURELY IN TRUST A COMMERCE OR FOREIGN COMMERCE. IT IS THE POSITION OF THE DEPARTMENT THAT UNDER GIBB BINS V OGDEN, IF YOU DO NOT GO TO A FOREIGN COUNTRY, IT CANNOT BE FOREIGN COMMERCE.

GIVE US A THUMBNAIL SKETCH OF THE FACTS OF THIS PARTICULAR CASE. AS FAR AS THE ONE REAR REVIEWING HERE TODAY.

SURE. THIS CASE CAME ON A WRITTEN DOCUMENT, A NOTICE OF RECONSIDERATION FROM THE DEPARTMENT. SO THERE WAS NO FULLY DEVELOPED SET OF FACTS AS WE HAD IN DEERBROOKE. WHICH THERE WAS A TRIAL, THERE WERE DEPOSITIONS. AND IN DREAM BOAT, WHERE THERE WERE DEPOSITIONS TAKEN AND THERE WAS AN EVIDENTIARY RECORD ON SUMMARY JUDGMENT. SO WE ARE SOMEWHAT LIMITED. BASICALLY WITH THE CRUISE TO NOWHERE VESSELS, THEY WOULD, WITH THIS CASE, I THINK EVERY WEEK THERE WERE FOUR CRUISE TO NOWHERE'S, WHICH ARE JUST GOING OUT FOUR, FIVE MILES BEYOND THE THREE MILE TERRITORIAL LIMITS OF FLORIDA, AND THEN FOUR TIMES A WEEK THERE WOULD BE A TRIP FLORIDA BAHAMAS, FROM PORT EVERGLADES TO THE BAHAMAS. CLEARLY THAT IS FOREIGN COMMERCE. THE BAHAMA TRIPS ARE NOT AT ISSUE.

MUST WE NOT LOOK AT THOSE TO DETERMINE WHETHER THIS VESSEL IS EVER USED IN FOREIGN COMMERCE? CERTAINLY SOME OF THE OTHER ONES DO NOT ENGAGE IN FOREIGN COMMERCE. THEY DO NOT GO TO THE ISLANDS, JUST GO OUT AND TURN AROUND. BUT THIS VESSEL, THIS VESSEL DOES GO, YOU AGREE, IN FOREIGN COMMERCE?

OH, YES.

AND THE STATUTE DOESN'T SEEM TO MAKE EXCEPTIONS FOR, WE ONLY LOOK TO THE CRUISES TO NOWHERE TO DETERMINE TAXABILITY OR THE ENTITLEMENT TO THE PRO RATION. BUT IT TALKS IN TERMS OF WHERE THAT VESSEL IS IN FOREIGN COMMERCE. SO HOW CAN IT NOT BE IN FOREIGN COMMERCE IF YOU AGREE THAT AT LEAST IT MAKES TRIPS FROM THE U.S. TO A PORT A FOREIGN PORT?

IT IS NOT EXCLUSIVELY IN FOREIGN COMMERCE.

WHERE DOES IT SAY THAT IN THE STATUTE? THAT IS WHAT I AM TRYING TO DETERMINE THAT HAS TO BE EXCLUSIVELY. BECAUSE SEEMS AS THOUGH THAT YOU'RE ENTITLED TO IT SO YOU DON'T VAULT ANY OTHER PRINCIPLES THAT IF PART TIME YOU'RE IN FOREIGN COMMERCE, WHICH YOU ADD MIT. BUT ANOTHER TIMES YOU ARE NOT, MAYBE, SUCH AS WHAT YOU'RE CHALLENGING, YOU'RE STILL ENTITLED TO THE PRO RATION TO BE ONLY TAXED FOR THE TIME THAT YOU'RE CONSIDERED WITHIN FLORIDA.

THE PURPOSE OF THE PRO RATION IS TO MAKE A DISTINGUISHED, IS TO DISTINGUISH BETWEEN THE FOREIGN AND INTRA -- FOREIGN AND INTERSTATE COMMERCE. WHICH MUST BE PRORATED TO MEET THE COMMERCE CLAUSE CONCERNS AND SOMETHING THAT'S PURELY A FLORIDA TRANSACTION. FOR EXAMPLE, AND I NEED TO TALK ABOUT THESE OTHER CASES.

BUT YOU LOOK AT IN DOING A PRO RATION AND AS I UNDERSTAND THE NUMBERS, IS THAT YOU WERE LOOKING TO THE TEST MILES THAT WERE DRIVEN -- OPERATED, 867 TEST MILES. 598 OF THOSE WERE IN FOREIGN COMMERCE, CRUISE TOSS THE BAHAMAS. AND 278 WERE CRUISE TOSS NOWHERE AND THAT IS WHERE THEY CAME UP WITH THE PERCENTAGE OR THE PRO RATION.

THAT'S CORRECT.

WELL IT SEEMS TO ME, YOU SEEM TO BE ASSERT THANKING THE CAUSE THE CRUISES TO NOWHERE WERE IN YOUR ARGUMENT, AND ACCEPTED TO BE TRUE THAT THEY WERE ONLY WITHIN FLORIDA. WE STILL HAVE OUT OF THOSE, THE TOTAL MILEAGE, FOREIGN COMMERCE.

THAT'S TRUE.

SO THERE MUST BE SOME KIND OF PRO RATION. YOU CAN'T TAX THAT ALL THE TIME.

RIGHT. THAT'S EXACTLY TRUE. AND WHAT THE DEPARTMENT DID WHEN THEY CONSTRUCTED THEIR ALLOCATION FORMULA, THEY TOOK THE INTRASTATE MILES, THE CRUISE TO NOWHERE OF 278 MILES A WEEK, AND THEN DIVIDED THAT BY THE TOTAL OF THAT SUM AND THE FOREIGN COMMERCE MILES, AND FOUND THE TAXABLE PERCENTAGE OF 31.74%.

SO IN THIS CASE, NEWSCAPE IS ENTITLED TO A PARTIAL SKPERPTION? SO, WE AGREE. WE DO AGREE WITH THAT.

SO WE ARE ONLY TALKING ABOUT, MAYBE IT IS NOT ONLY BECAUSE I KNOW IT IS A LOT OF MONEY, IS WHAT'S IN THE ENUMERATER?

RIGHT.

ISSUE WHAT IS IN THE ENUMERATER, ONLY THE THAT MILES, MILES UP TO THE THREE MILE LIMIT, WHICH IS WHAT THE NEW SEA ESCAPE, WHATEVER IT IS, CLAIMS, OR WHETHER THE HE NUM EARTHER IS THE TOTAL MILES OF THE CRUISE TO NOWHERE?

CORRECT. NOW WHAT THE FOURTH DISTRICT DID IN THIS CASE, WHAT WAS ARGUED THERE WAS SIMPLY HOW DO WE PRORATE?

LET ME ASK YOU THIS. IN YOUR BRIEF, YOU REPEATEDLY EMPHASIZED THE LAST SENTENCE OF THE STATUTORY SUBSECTION, WHICH READS VESSELS AND PARTS THEREOF USED EXCLUSIVELY IN INTRASTATE COMMERCE DO NOT QUALIFY FOR THE PRO RATION OF TAX. THAT'S CORRECT.

AND YOU REPEATED SAY THIS IS THE KEY SENTENCE IN THE STATUTE AND THE ONE WE SHOULD FOCUS ON. NOW FOCUSING ON THAT KEY SENTENCE IN THE STATUTE, DOESN'T THAT INDICATE AN INTENT BY THE LEGISLATURE AND THE STATUTE ITSELF, THAT YOU'RE NOT ENTITLED TO AN EXEMPTION IF ALL OF YOUR COMMERCE IS SOLELY WITHIN THE STATE OF FLORIDA?

THAT'S CORRECT.

AND REGARDLESS OF WHETHER YOU'RE ACTUALLY -- SO THE ISSUE IS NOT WHETHER YOU'RE IN FOREIGN COMMERCE. THE ISSUE IS WHETHER YOU'RE ONLY IN FLORIDA COMMERCE. AND ISN'T IT UNDISPUTED HERE THAT YOU'RE NOT ONLY IN FLORIDA COMMERCE, BECAUSE YOU ARE OUTSIDE FLORIDA'S THREE MILE LIMIT, SO WHETHER YOU'RE IN FOREIGN COMMERCE OR NOT, AT LEAST YOU'RE NOT TOTALLY INTRASTATE. AND THAT'S CONSISTENT WITH OUR POSITION, I SUPPOSE IT IS TWO SIDES OF THE SAME COIN. IF IT IS NOT FOREIGN COMMERCE, THEN IT MUST BE INTRASTATE COMMERCE. AND THAT'S WHAT WE ARE SAYING. NOW, WE ALSO HAVE TO LOOK AT THE TERRITORIAL SORT OFTY OF THE UNITED STATES. AND THOSE ARE THESE TWO PROCLAMATIONS.

AS I UNDERSTAND JUSTICE CANTERO'S QUESTION IS THAT YOU HAVE GOT A THREE MILE LIMIT, WHICH IS WITHIN THE BOUNDARIES OF THE STATE OF FLORIDA. IS THAT CORRECT?

WELL THREE MILES OR TO THE GULF STREAM, WHICHEVER IS FARTHER.

YOU HAVE GOT A 12 MILE LIMIT, WHICH IS THE TERRITORY OF THE UNITED STATES.

YES, YOUR HONOR.

SO, THE QUESTION IS, WHERE IN THAT NINE MILE STRETCH BETWEEN THE THREE MILES AND THE 12 MILES, HOW DO YOU DIVIDE -- DEFINE THAT AS BEING INTRASTATE IF YOU'RE SAYING THAT INTRASTATE MEANS WITHIN THE STATE OF FLORIDA?

A CRUISE TO NOWHERE STARTS IN FLORIDA. IT DOES NOT GO TO ANY FOREIGN JURISDICTION. AND IT RETURNS TO FLORIDA. IT'S TOTALLY WITHIN THE STATE. AND I DON'T MEAN PHYSICALLY WITHIN THE STATE. BUT ALL. NEXUS, ALL OF THE CONTACTS ARE TOTALLY WITHIN THE STATE. AND I THINK IT'S FULLY TAXABLE.

BUT IT IS NOT WITHIN THE STATE OF FLORIDA. IS IT? IF IT'S THREE AND A HALF MILES OFFSHORE, WE WOULDN'T CLAIM THAT THAT IS, IF THERE WERE SOME RIG THAT WAS BUILT OUT THERE, WOULD THAT BE SOMETHING THAT WOULD BE A RIG BUILT WITHIN THE STATE OF FLORIDA?

NO, WE ARE GETTING CONFUSED HERE WITH THE DISTINCTION BETWEEN A PHYSICAL TEST, WHICH MEANS YOU MUST SAY GO OUTSIDE THE TERRITORIAL WATER OF FLORIDA OR TERRITORIAL WATER OF THE UNITED STATES, VERSUS A FUNCTIONAL TEST. AND THE STATUTE --.

WHAT I'M TRYING TO UNDERSTAND IS HOW YOU DEFINE IN THIS STATUTE THE WORD INTRASTATE.

WELL I THINK IT IS MORE OF THE OTHER SIDE OF THE COIN. YOU HAVE TO LOOK AT BECAUSE THE EXEMPTION READS, THE SALE OR USE OF VESSELS IN PARTS OF THE USE TO TRANSPORT PERSONS OR PROPERTY IN INTERSTATE OR FOREIGN COMMERCE IS SUBJECT TO THE TAXES IMPOSED BY THIS CHAPTER ONLY TO THE EXTENT PROVIDED HEREIN. THE TESTIMONY GOES AT WHAT'S FOREIGN COMMERCE. IF IT'S NOT FOREIGN COMMERCE AND IT IS NOT INTERSTATE COMMERCE, THEN CLEARLY IT IS A FLORIDA TRANSACTION.

DID, IN THE STATE OF FLORIDA, CAN PEOPLE GAMBLE LEGALLY?

NO.

I GUESS WHAT I'M REALLY TRYING TO UNDERSTAND HERE, WHAT IS HAPPENING IS THAT THE STATE OF FLORIDA, ALTHOUGH IT PROHIBITS GAMBLING, THE DEPARTMENT OF REVENUE IS SAYING THAT THE LEGISLATURE INTENDED THAT WE SHOULD GET A PERCENTAGE OF THIS GAMBLING CONCESSION REVENUE EVEN THOUGH IT OCCURS OUTSIDE OF FLORIDA.

SURE. LETS.

AND I, AGAIN, IN TALKING ABOUT REALLY WHAT WE'RE LOOKING TO TAX HERE, A LOT OF IT IS IS THE GAMBLING CONCESSION REVENUE.

IT IS NOT THE PROCEEDS FROM THE GAMBLING. ALL THE GAMBLING JUST GIVES THE MEASURE OF WHAT THE RENT IS FOR THIS LICENSE TO USE ON THE VESSEL. AND THIS IS WHERE I THINK THE FOURTH DISTRICT GOT CONFUSED. THEY WERE FOCUSING ON THE GAMBLING. THIS IS NOT AN EXEMPTION FOR GAMBLING VESSELS. IT IS AN EXEMPTION FOR VESSELS THAT ENGAGE IN FOREIGN COMMERCE. AND THIS IS WHERE THE FOURTH DISTRICT --.

THAT GOES BACK TO JUSTICE CANTERO'S QUESTION OR IS IT SAYING THAT THE INTENT OF THE LEGISLATURE IS ONLY TO TAX INTERSTATE COMMERCE? AND WHEN YOU HAVE GOT SOMETHING THAT IS BETWEEN MILE THREE AND 12, YOU TRULY ARE NOWHERE. YOU'RE NOT IN FOREIGN COMMERCE AND YOU'RE NOT IN INTERSTATE COMMERCE. YOU'RE IN NOWHERE COMMERCE. I MEAN THAT'S WHAT WE'RE, I THINK THAT'S THE PROBLEM HERE IN TRYING TO UNDERSTAND THE LEGISLATIVE INTENT. THERE WOULD BE NO, I GUESS THE QUESTION, IT IS NOT A QUESTION OF WHETHER IT WOULD BE LEGAL OR NOT TO TAX BETWEEN THREE MILES AND 12 MILES BECAUSE THAT WOULDN'T CONFLICT WITH, YOU KNOW, THE SOVEREIGN AUTHORITY OF THE UNITED STATES. BUT, WHETHER THE INTENT OF THE LEGISLATURE WAS TO TAX THESE CRUISES IN THAT WAY.

SEE, THEY'RE NOT TAXING THE CRUISES, YOUR HONOR. THEY'RE TAXING FLORIDA TRANSACTIONS. LET'S TAKE EXAMPLE THE GAMBLING EQUIPMENT. THEY TOOK GAMBLING EQUIPMENT, PLACE IT ON THE VESSELS A IN PORT EVERGLADES IN FORT LAUDERDALE. THAT WOULD BE NO DIFFERENT IF THEY BOUGHT A COMPUTER AND PUT IT IN THEIR OFFICE IN FORT LAUDERDALE.

BUT THERE IS NO ISSUE HERE ABOUT WHETHER THAT CAN BE TAXED. THE ISSUE IS WHETHER THE TAX CAN BE PRORATED. ISN'T THAT THE ISSUE HERE?

NO, YOU ONLY PRORATE FOREIGN AND INTERSTATE COMMERCE BY THE PLAIN LANGUAGE OF THE STATUTE.

YEAH, BUT AGAIN, -- EVEN NEWSCAPE ISN'T SAYING THAT SOME PERCENTAGE OF THAT SHOULDN'T BE TAX ITED. IT IS JUST THEIR PERCENTAGE IS BASED ONLY ON THE TIME THAT IT IS, THAT THE EQUIPMENT IS IN FLORIDA. AS OPPOSED TO OUTSIDE OF FLORIDA.

IF I UNDERSTAND YOUR QUESTION, LET ME RESPOND THIS WAY. ALL OF THESE TRANSACTIONS ARE FLORIDA BASED. TAKE FOR EXAMPLE IF I RENT A CAR HERE IN TALLAHASSEE TO GO TO THE 11TH CIRCUIT IN ATLANTA, I'LL PAY, IT IS JUST LIKE RENTING A SPACE TO CONDUCT A GAMBLING CONCESSION ON THIS VESSEL. WHEN GI TO ATLANTA AND COME BACK, EVEN THOUGH MOST OF MY MILEAGE AND MOST OF MY TIME IS SPENT IN GEORGIA, WHEN I TAKE THE CAR BACK TO THE AIRPORT, I PAY SALES TAX HERE IN FLORIDA. I PAY NOTHING, WE ARE NOT FOCUSING ON WHAT'S GOING ON.

SO IF THAT'S THE CASE, IF THE GAMBLING EQUIPMENT IS MANUFACTURED, PUT ON THE VESSEL IN FLORIDA, A ALWAYS COMES BACK TO FLORIDA, THEN WHAT, WHERE IS THE DOUBLE TAXATION THAT WOULD OCCUR ON THE EQUIPMENT IF IT STOPS IN THE BAHAMAS? I MEAN IF WHAT YOU'RE SAYING IS THAT IF I HAVE A VEHICLE AND I BUY IT IN FLORIDA I COULD GO ANYWHERE I WANT. MY SALES TAX IS BEING PAID IN FLORIDA AND NOT SOMEPLACE ELSE.

THAT'S ENTIRELY CORRECT. AND.

WELL THAT'S WHY I AM TRYING TO SEE, THEN THE STOPPING AT A PORT IS MEANINGLESS. BASED

ON WHAT YOU'RE SAYING. BECAUSE IT DOESN'T AFFECT WHERE YOU BOUGHT THE EQUIPMENT OR WHERE YOU'RE MAINTAINING IT.

THAT IS EXACTLY -- THAT IS EXACTLY WHAT IS SO OBVIOUS IN THIS CASE. THERE IS NO DOUBLE TAXATION WITH RESPECT TO THESE FLORIDA TRANSACTIONS. LET'S LOOK AT THE WARDAIR CASE, BECAUSE THE WARDAIR CASE INVOLVING THE JET FUEL, WHICH WAS UNITED STATES SUPREME COURT CASE FROM 1986 DEALT WITH SOMETHING, AND THAT CASE WAS GENERATED WHEN THE STATE REPEALED THE PRO RATION FOR FUEL TAX SOLD TO THESE AIRLINES THAT WOULD LOAD UP WITH FUEL IN MIAMI AND FLY TO CANADA. THEY FORMALLY PRORATED IT. THEY WOULD HAVE TO ONLY PAY TAX ON A PORTION TILL THEY FLEW INTO INTERNATIONAL AIR SPACE. BUT THE DEPARTMENT OF REVENUE AND LEGISLATURE CHANGED THAT. SO WHEN THEY LOADED UP WITH JET FUEL IN MIAMI, THEY PAID FUEL TAX TO FLORIDA ON THE WHOLE AMOUNT. AND THEY FELT IT WAS WRONG. BUT THE YITS SUPREME COURT SAID NO, THIS IS, EACH THOUGH THIS VESSEL, THE AIRCRAFT IS ENGAGED IN FOREIGN COMMERCE, THIS IS A DISCRETE FLORIDA TRANSACTION. JUST AS IF PURCHASING THE GAMBLING EQUIPMENT PUTTING IT ON THE VESSEL. JUST BY PROVISIONING THE VESSEL, CONSUMABLES WITH OIL AND FOOD.

EVEN WITH THAT IN MIND, WHY ISN'T IT, AND TELL ME WITH THE DOWNSIDE IS, TO PRORATING THE TAXES, BACK TO THE ENUMERATER. PRORATING THE TAXES, BASED ON THE ENUMERATER BEING THE ACTUAL MILES THAT ARE IN FLORIDA AND THE STATE OF FLORIDA, YOU KNOW, OUT TO THE THREE MILE LIMIT. WHAT IS THE DOWNSIDE OF MAKING THAT ENUMERATER THAT PARTICULAR FIGURE? I MEAN, ISN'T FLORIDA THEN GETTING THE BENEFIT OF TAXES, ACTUALLY IN INTRASTATE COMMERCE?

IF I UNDERSTAND YOUR QUESTION CORRECTLY, I THINK YES.

YES YOU CAN MAKE THAT ENUMERATER THE FLORIDA MILE?

RIGHT. EXACTLY WHAT WAS DONE HERE. IF WE --.

NO BUT I THOUGHT YOU WERE ARGUING THAT THE ENUMERATER SHOULD BE THE FLORIDA MILES PLUS THE SORT OF NO MAN'S LAND MILES THAT INCLUDED UP TO THE 12 MILE LIMIT.

YES, YES, THAT'S CORRECT. WHATEVER THEIR ACTUAL MILEAGE IS, AS LONG AS THEY DON'T GO TO A FARN COUNTRY -- FOREIGN COUNTRY. IN THIS CASE I THINK EACH TRIP WAS LIKE 40 OR 50 MILES.

MY QUESTION TO YOU THOUGH IS, WHAT IS THE DOWNSIDE AND WHAT WOULD BE WRONG WITH USING THE ENUMERATER THAT JUST THE FLORIDA MILES AS OPPOSED TO, SAY THEY WENT OUT 7 MILES AS OPPOSED TO THREE? WHAT IS WRONG WHAT USING THE THREE THERE AND THE THREE BACK OR WHATEVER THAT FIGURE MIGHT BE, AS THE ENUMERATER?

WELL ACTUALLY THAT IS WHAT WAS ARGUED BY NEW SEA ESCAPE IN THE FOURTH DISTRICT. WHAT THAT DOES, IT MAKES THE AMOUNT OF TAX SO DID HE MINUS AS TO MAKE THIS A TAX FREE ZONE. FLORIDA'S PERCENTAGE, YOU WOULD HAVE TO SAY HERE, MAKING THE ENUMERATER 40 INSTEAD OF 278 MILES.

BUT I'M STILL HAVING A HARD TIME REALLY, WITH HOW WE CAN SAY THAT BEYOND THE THREE MILES YOU'RE IN INTRASTATE COMMERCE.

BECAUSE IT'S NOT FOREIGN COMMERCE. AND IT HAS TO BE ONE OR THE OTHER.

THAT COULD BE INTERSTATE COMMERCE ALSO.

WELL YES BUT IT IS CONCEDED THEY DON'T GO TO ANOTHER STATE.

DOESN'T THE GAMBLING SHIP, THE FEDERAL ACT ESSENTIALLY SAY FOR PURPOSES OF THESE GAMBLING SHIPS, THAT GO TO CRUISES TO NOWHERE, THAT FOREIGN COMMERCE IS DEFINED AT THE THREE MILE LIMIT AND NOT AT THE 12 MILE LIMIT?

WELL, THE STATUTORY DEFINITIONS AND THERE ARE SEVERAL THAT HAVE BEEN OFFERED BY BOTH PARTIES IN THIS CASE, THAT'S NOT DETERMINATIVE OF WHAT FOREIGN COMMERCE IS. THAT'S FOREIGN COMMERCE FOR THE PURPOSE OF THE JOHNSON AFTER THE GAMBLING SHIP ACT. BUT THE POSITION OF THE DEPARTMENT WHEN YOU LOOK AT WHAT'S FOREIGN COMMERCE FOR THE PURPOSE OF THIS EXEMPTION, YOU HAVE TO LOOK AT WHAT THE UNITED STATES SUPREME COURT HAS SAID, WHICH IS YOU MUST GO TO A FOREIGN COUNTRY. THIS IS THE LAW IN GIBBONS V OGDEN IN 1824 AND STILL THE LAW.

THE SUPREME COURT HASN'T ALWAYS SAID THAT? WASN'T THERE A SHIP WENT FROM SAN FRANCISCO TO SAN DIEGO AND THAT WAS FOREIGN COMMERCE BECAUSE IT WENT ON THE HIGH SEAS IN ON THE WAY FROM ONE TO THE OTHER?

IT DID. BUT THAT'S LAWTON, I AM JUST READY TO TALK ABOUT LORD. WHAT THE LORD CASE INVOLVED WAS THE, WAS REALLY A CHOICE OF LAW QUESTION. THE ISSUE THAT WAS FRAMED BY THE COURT WAS, THE SINGLE QUESTION PRESENTED BY THE ASSIGNMENT OF ERRORS, WHETHER CONGRESS HAS THE POWER TO REGULATE THE LIABILITY OF OWNERS OF VESSELS NAVIGATING THE HIGH SEAS BUT ENGAGED ONLY IN THE TRANSPORTATION OF GOODS AND PASSENGERS BETWEEN PORTS AND PLACES IN THE SAME STATE. WHAT LORD DEALT WITH WAS, DOES THE FEDERAL GOVERNMENT HAVE THE RIGHT TO REGULATE NAVIGATION? THIS WAS WHERE A VESSEL WAS LOST AND THE QUESTION WAS, DOES FLORIDA, OR RATHER CALIFORNIA LAW APPLY OR DOES FEDERAL LAW APPLY? BECAUSE THE FEDERAL LAW APPLIED, THEN THE LIABILITY OF THE OWNER OF THE VESSELS LIMITED TO THE VESSEL ITSELF, WHICH IS AT THE BOTTOM OF THE OCEAN. THAT'S ALL THAT CASE IS ABOUT. IT IS NOT A DEFINITION OF FOREIGN COMMERCE. FOREIGN COMMERCE IS DEFINED IN GIBB BINS V OGDEN. IN THAT CASE HAS BEEN CITED FOR WHAT IS INTERSTATE AND FOREIGN COMMERCE, 1824.

MARSHAL REMINDED YOU ABOUT YOUR REBUTTAL TIME. IF YOU DON'T SIT DOWN SOON YOU WON'T HAVE ANY. WANT TO PAUSE AT THIS TIME.

THANK YOU.

MAY IT PLEASE THE COURT I'M EDNA CARUSO, I AM HERE ON BEHALF OF NEW SEA ESCAPE CRUISES. I'M HERE WITH KENNETH HART, HE FILED AND AMICUS BRIEF IN THIS CASE ON BEHALF OF DEERBROOKE. THAT WAS THE NEXT CASE THAT WAS DECIDED, THE SUBSEQUENT CASE DECIDED BY THE FOURTH DISTRICT.

LET ME ASK YOU TO CLARIFY ONE THING FOR ME BEFORE YOU GET STARTED ON YOUR ARGUMENT. AND THAT IS, ARE YOU ARGUING, IS THERE AN ARGUMENT BEING MADE HERE THAT YOU CANNOT BE DAXED AT ALL?

ABSOLUTELY. YES.

SO EVEN THOUGH THREE MILES THAT WE HAVE BEEN TALKING ABOUT, YOU ARE CONTENDING THAT YOU CANNOT BE TAXED ON THOSE MILES?

YES. OUR -- AND I WANTED TO CLARIFY THAT BECAUSE I THINK SOME QUESTIONS SHOWED THAT YOU UNDERSTOOD THAT WE WERE ARGUING THERE IS A PARTIAL EXEMPTION. THEY'RE ARGUING THAT ON THE CRUISES -- THE ISSUE IN THIS CASE IS HOW ARE WE CLASSIFIED THE CRUISES TO NOWHERE? WHAT ARE THEY IN ARE THEY INTERSTATE, ARE THEY FOREIGN COMMERCE? AND WHERE DO THEY GO IN THAT FORMULA, THE RATIO?

YOU'RE ARGUING THAT THIS EQUIPMENT IS NOT USED AT ALL IN FLORIDA AND THEREFORE IT SHOULD NOT BE TAXED?

I'M ARGUING THAT THIS IS FOREIGN COMMERCE. AND THAT UNDER THE DEFINITIONS OF FOREIGN COMMERCE, ACCORDING TO THE UNITED STATES SUPREME COURT, AND UNDER THE DEFINITION OF FOREIGN COMMERCE UNDER THE GAMBLING SHIP ACT, THIS IS FOREIGN COMMERCE. AND THEREFORE ALL OF THE SHIPS ACTIVITIES ARE IN FOREIGN COMMERCE. AND NOT INTRASTATE.

SO THIS IS A COMMERCE CLAUSE ARGUMENT IT IS UNCONSTITUTIONAL TO TAX THIS?

YES, SIR, OUR ARGUMENT IS TWOFOLD. WE THINK WE COME TO THAT CONCLUSION UNDER THE COMMERCE CLAUSE AND UNDER THE LANGUAGE OF THIS STATUTE.

WOULD YOU ADDRESS THE SIX ELEMENTS THEN THAT YOU MUST MEET UNDER JAPAN LINE TO SHOW THAT THERE IS A VIOLATION?

PARDON ME I'M SORRY?

THE ELEMENTS UNDER JAPAN LINE TO SAY THERE IS A COMMERCE CLAUSE VIOLATION THAT EXPANDED UPON TROPICAL SHIPPING SOMEWHAT. TO HOW THEY EACH SATISFIED IN THIS CASE, WITH THE ELEMENTS WOULD SHOW.

I THINK IN JAPAN LINE, WHAT THE SUPREME COURT HELD WAS THAT WHEN YOU'RE TALKING ABOUT FOREIGN COMMERCE, THERE IS A PARTICULAR RULE THAT'S APPLIED WHERE YOU HAVE A HOME PORT THAT IS IN ANOTHER COUNTRY. AND THAT IS WHAT WE HAVE HERE. WE HAVE A BAHAMIAN SHIP WITH A BAHAMIAN SHOP OWNED AND REGISTERED IN THE BAHAMAS COMING TO THAT.

BUT JAPAN LINE WAS DEALING WITH AD VALOREM TAXATION. WE ARE NOT TALKING ABOUT THE USE KIND OF TAXES, RIGHT?

WE ARE TALKING ABOUT USE TAXES.

HERE WE ARE. JAPAN LINE WAS TALKING ABOUT AD VALOREM TAXES, CARGO CONTAINERS.

YES. BUT IN THAT TAX, -- IN THAT CASE, THEY SAID, IF A VESSEL OR THE CONTAINERS HAVE A PORT IN ANOTHER COUNTRY, AND THE TAXATION HERE EVEN APPORTIONMENT COULD SUBJECT THAT VESSEL OR CONTAINER TO DOUBLE TAXATION, A RISK OF DOUBLE TAXATION BECAUSE THEY'RE REGISTERED ELSEWHERE, THAT THAT'S AN INTERFERENCE OF FOREIGN COMMERCE.

WELL CERTAINLY CONCEDE THAT WITH A CARGO CONTAINER THAT IS THERE, THEY JUST USE IT AND SHIP IT BACK AND FORTH IT IS TAXED THERE. BUT THE PERIOD OF TIME THEY'RE IN FLORIDA WATER I CAN SEE A DISTINCTION BETWEEN THE USE AND SALES TAXES AS COMPARED TO AD VALOREM TAXATION.

WELL, OKAY. THIS IS REALLY, WE ARE TALKING ABOUT IN THIS CASE USE TAXES. I DON'T -- ALTHOUGH THEY MIGHT DISPUTE THAT. I THINK WE ARE TALKING ABOUT USE TAXES, NOT SALES TAXES. THE GAMBLING SHIPS ARE TAXED BY THE FEDERAL GOVERNMENT BECAUSE THEY'RE PAST FLORIDA, THREE MILE LIMIT AND THE FEDERAL GOVERNMENT IS TAXING THE INCOME MADE ON THE GAMBLING OUT THERE. THEY'RE TALKING ABOUT THEY WANT TO SAY THAT THEY'RE ENTITLED TO IMPOSE A USE TAX ON THE VESSEL. OR EXCLUSIVELY ON THE THINGS THAT GO ON THAT SHIP. THE GAMBLING EQUIPMENT ITSELF, THE USE OF THE GAMBLING EQUIPMENT, WHICH OCCURS ONLY OUTSIDE THE THREE MILE LIMIT. AND ON THE CONCESSIONS THAT OCCUR ON THAT SHIP, WHICH OCCUR OUTSIDE THE THREE MILE LIMIT. THEY'RE NOT -- THEY ADMIT THAT IN REGARD TO ANY SALES THAT OCCUR OUTSIDE THE THREE MILE LIMIT, THEY CANNOT TAX THOSE.

BUT FOR SOME REASON, THEY'RE SAYING BUT WE CAN IMPOSE A USE TAX ON EVERYTHING COMPLETELY EVEN THOUGH THIS SHIP IS BEYOND THE THREE MILE LIMIT, WHICH WE SAY CONFLICTS WITH THE FACT THAT THEY SAY THEY CAN'T IMPOSE SALES TAX ON WHAT GOES ON OUT THERE. BUT THEY CAN IMPOSE USE TAX.

BECAUSE WE ARE DEALING WITH, THE DREAM BOLT CASE, WHERE THEY DON'T GO TO ANY FOREIGN PORT AND THERE ARE CRUISES TO NOWHERE. WHERE WOULD BE THE RISK -- YOU WOULD I GUESS SAY THAT THE FIRST DISTRICT WOULD SAY ALL TAX IS TOTALLY WRONG, NONE OF THAT SHOULD BE STACKSED IN DREAM BOAT BECAUSE THEY WERE OUTSIDE OF THE THREE MILE LIMIT,.

YES.

SO THEY DIDN'T GO TO A FOREIGN PORT.

I DON'T THINK IT MAKES ANY DIFFERENCE WHETHER YOU GO TO A FOREIGN PORT OR NOT.

WHERE IS THE RISK OF DOUBLE TAXATION IF THE CRUISE GOES TO IN WHERE? WHO IS GOING TO TAX THE USE OF THE EQUIPMENT?

WELL IN DREAM BOAT, I DON'T RECALL WHETHER THAT SHIP WAS REGISTERED IN A FOREIGN PORT OR NOT. BUT, HERE, WE DO HAVE ONE THAT IS REGISTERED.

AREN'T YOUR OFFICES IN FORT LAUDERDALE AND THE EQUIPMENT WAS PURCHASED IN FORT LAUDERDALE?

WELL, YES. THERE ARE CERTAIN AMOUNT OF THINGS THAT DO OCCUR IN THIS STATE, THERE IS NO QUESTION ABOUT THAT.

I MEAN WE HAVE GOT SHIPS THAT GO IN AND OUT OF FLORIDA THAT ARE LIBERIAN REGISTRY, THAT'S A FAVORITE ONE. THE REGISTRATION OF THE SHIP IS NOT GOING TO DETERMINE WHERE THEY'RE GOING TO BE TAXED.

WAIT, WAIT.

YOU WERE INTRODUCING YOUR COLLEAGUE IN THE VERY BEGINNING. I AM NOT SURE WHETHER YOU WERE DOING THAT TO PRESENT SOME OF THE ARGUMENT.

ABSOLUTELY. LET ME EXPLAIN TO YOU. HE'S BEEN WORKING ON THESE CASES FOR FIVE OR SIX YEARS. HE WAS IN THE DIFFERENT CASE, BUT HE IS A TAX EXPERT. IF ANYBODY KNOWS THIS AREA, HE REALLY DOES KNOW IT. AND SO I'M SURE, I'M MAKING HIM VERY NERVOUS UP HERE. I WOULD LIKE HIM TO PERHAPS ASSIST THE COURT PROBABLY BETTER THAN I CAN.

COMPLETE THE ARGUMENT.

I DIDN'T WANT TO COMPLETE THE ARGUMENT.

WELL IF YOU'D COME UP TO THE MICROPHONE.

IF YOU WOULD STATE YOUR NAME REPRESENTATION ON THE RECORD.

YES, KENNETH HART, YOUR HONOR. AMICK CUSS COUNSEL FOR DEERBROOKE. -- AMICK CUSS COUNSEL FOR DEERBROOKE. WITH RESPECT TO YOUR QUESTION YOUR HONOR, I REALLY FELT COMPELLED TO SPEAK UP. THE HOME PORT OF THIS VESSEL IS IN THE BAHAMAS. IN THE JAPAN LINE CASE, THE UNITED STATES SUPREME COURT CLEARLY STATED THAT AS A MATTER OF INTERNATIONAL LAW, A VESSEL'S HOME PORT HAS PLENARY POWER TO TAX IT. AND THEREFORE,

THE BAHAMAS UNDER PRESENT LEGISLATION IN THE BAHAMAS OR NEW LEGISLATION IN THE BAHAMAS, THE ISLANDS OF THE BAHAMAS HAVE FULL POWER TO TAX THIS VESSEL AND ANYTHING IT DOES.

AND IS THE BAHAMAS CURRENTLY TAXING THE USE OF THE EQUIPMENT?

YOUR HONOR, I DON'T KNOW THAT.

YOUR ALLEGATION -- THERE IS NO ALLEGATION ON THIS RECORD THAT THE BAHAMAS IS CURRENTLY TAXING THE USE OF THE EQUIPMENT?

YOUR HONOR I DON'T KNOW THE ANSWER TO THAT BUT I WOULD POINT OUT IN JAPAN LINE THE SUPREME COURT CLEARLY STATED THAT IT IS THE RISK OF MULTIPLE TAXATION THAT RENDERS THE TAX UNCONSTITUTIONAL.

BUT IT'S FAR DIFFERENT HAVING TO DO WITH AD VALOREM TAX THAN IT IS TO DO WITH THE SALES OR USE TAX, CORRECT?

YOUR HONOR, A USE TAX IS AN AD VALOREM TAX. IT IS A TAX ON A VALUE.

WELL YOU'RE NOT CLAIMING ACTIVITIES --.

GO AHEAD.

YOU'RE NOT CLAIMING THAT THE ACTIVITIES ON BOARD THAT SHIP THAT ONCE IT'S OUT OF FLORIDA PORT, ARE NOT SUBJECT TO THE JURISDICTION OF THE LAWS OF THE STATE OF FLORIDA?

GEE, I REALLY DON'T KNOW THE ANSWER TO THAT YOUR HONOR, THAT DEPENDS ON A WHOLE BUNCH OF OTHER ISSUES THAT I CAN'T, I REALLY CAN'T RESPOND TO. I CAN TELL YOU HOWEVER.

WELL LET ME START WITH, GAMBLING ACTIVITIES AT PORT IN THE STATE OF FLORIDA, OBVIOUSLY THAT WOULD BE UNLAWFUL, IS THAT CORRECT?

WELL, IF THOSE GAMING ACTIVITIES WERE CONDUCTED WITHIN THE STATE OF FLORIDA, THAT'S CORRECT, THEY CLEARLY WOULD BE UNLAWFUL. BUT THAT'S THE PURPOSE OF GAMBLING SHIP ACT, JOHNSON ACT, IS TO EXEMPT THOSE ACTIVITIES CONDUCTED OUTSIDE FLORIDA LIMITS FROM THOSE LAWS.

YOUR COLLEAGUE IN STATING THE ISSUE FROM THE OUTSET SAID THAT AN ARGUMENT WAS GOING TO BE MADE BOTH THAT THE STATUTORY SCHEME DIDN'T INCLUDE AN INTENT TO TAX THESE TRANSACTIONS. AND THE CONSTITUTIONAL ARGUMENT. WHAT IS YOUR ARGUMENT WITH REFERENCE TO THE INTERPRETATION OF THE STATUTORY SCHEME THAT'S BEFORE US?

WELL, FIRST OF ALL YOUR HONOR, WE CONCEDE THAT THERE IS NEXUS FOR TAXATION HERE, THERE IS PLENTY OF OF ACTIVITY IN FLORIDA FOR FLORIDA TO TAX. BUT, WE ALSO ASSERT STRONGLY THAT THIS VESSEL IS CONTINUOUSLY ENGAGED IN FOREIGN COMMERCE. AND UNDER THE STATUTE, IS COMPLETELY EXEMPT FROM FLORIDA TAXATION.

SO IN DREAM BOAT, DREAM BOAT, SAYS IT WAS A FOREIGN, I MEAN A FLORIDA CORPORATION, OWNED SEVERAL VESSELS AND WENT, THEIR CRUISES WERE CRUISES TO NOWHERE. THEY DIDN'T GO TO A FOREIGN PORT. IS IT YOUR POSITION THAT DREAM BOAT IS INCORRECT, THAT THE TOTALITY OF THE, THAT THEY'RE NOT ELIGIBLE FOR THE EXEMPTION FOR FOREIGN COMMERCE?

IT IS OUR POSITION YOUR HONOR THAT DREAM BOAT WAS INCORRECTLY DECIDED. IF I COULD ELABORATE ON THAT JUST.

COULD YOU TELL US, THAT THEY ARE EXEMPT TOTALLY FROM TAXATION?

YES, I BELIEVE THAT DREAM BOAT IS IS EXEMPT TOTALLY FROM TAXATION. YOU SEE THE FIRST DCA IN DREAM BOAT DECIDED THAT SINCE THEY DIDN'T GO OUT BEYOND AND THEY ASSERTED A 12 MILE LIMIT, THAT THEY WERE NOT ENGAGED IN FOREIGN COMMERCE. THAT I BELIEVE YOUR HONOR IS INCORRECT. THE TERRITORIAL LIMIT OF THE UNITED STATES IS THREE MILES. THE TERRITORIAL LIMITS STIPULATED OF FLORIDA IN THIS CASE IS THREE MILES. THEY'RE BEYOND THAT. THEY'RE CRUISING INTO INTERNATIONAL WATERS. UNDER THE U.S. SUPREME COURT DECISIONS UNDER THE FEDERAL STATUTES, THAT IS FOREIGN COMMERCE. THEY'RE EXEMPT FROM TAXATION UNDER THE FLORIDA STATUTE.

WELL YOU DON'T EVEN CONCEDE THAT BETWEEN THE PORT AND THREE MILES, THAT THEY'RE ENGAGED IN FLORIDA COMMERCE?

THE DEPARTMENT'S OWN REGULATIONS SAY THAT A VESSEL ENGAGED IN FOREIGN COMMERCE, THOSE THREE MILES ARE IGNORED FOR PURPOSES OF THE FRACTION.

WHAT IS THE EXEMPTION SAY?

THE EXEMPTION SAYS THAT A VESSEL ENGAGED IN FOREIGN COMMERCE IS TOTALLY EXEMPT FROM FLORIDA TAXATIONS. AS IT MUST BE IN ORDER TO SATISFY THE COMMERCE CLAUSE.

SO YOU'RE SAYING ON THE PLANE, THIS IS REALLY A QUESTION NOT ONLY OF STATUTORY INTERPRETATION, BECAUSE YOU SAY WE DON'T HAVE TO INTERPRET IT, IT IS PLAIN IF WE RE-READ THIS --.

THAT'S CORRECT.

IT IS NOT A PORTION EXEMPTION, IT IS A TOTAL EXEMPTION IF THEY GO OUTSIDE OF THREE MILES.

THAT'S CORRECT.

AND TWO, THAT IF THEY, THAT NOT TO READ IT THAT WAY WOULD RENDER IT UNCONSTITUTIONAL UNDER THE COMMERCE CLAUSE?

THAT IS ABSOLUTELY CORRECT YOUR HONOR.

SO IF WE SAY, HOWEVER, THAT THE, THAT THE TERRITORIAL LIMITS OF THE UNITED STATES IS 12 MILES, IF THAT'S THE CASE, THEN THEY WOULD BE ENTITLED TO -- YOU WOULD NOT BE INTIT TOLD A TOTAL EXEMPTION?

WELL YOUR ASSUMPTION ON THE 12 MILES, YOUR HONOR, WOULD BE VERY INCONSISTENT.

WELL LET'S JUST ASSUME IT EVEN IF IT IS INCONSISTENT. THEN DO YOU HAVE THAT SAME ARGUMENT THAT THIS, THAT THE VESSEL WOULD BE TOTALLY NON-TAXABLE?

I FIND THAT QUESTION DIFFICULT TO ANSWER, YOUR HONOR. IT IS AN EXCELLENT QUESTION. WE HAVE THIS AREA -- YOU SEE THE UNITED STATES AT PRESENT HAS A NUMBER OF LIMITATIONS FOR VARIOUS PURPOSES. THERE IS A THREE MILE TERRITORIAL SEA. THERE IS A 12 MILE FOREIGN POLICY FEDERAL CRIMINAL LAW LIMIT. THERE IS A 24 MILE AN HOUR CONTIGUOUS ZONE. 200 MILE FISHING LIMIT. WAR ALL THOSE AREAS OUT THERE? I SUBMIT THEY'RE ALL INTERNATIONAL WATERS. AND A VESSEL, THE LONG LINE OF SUPREME COURT CASES SO HOLDING THAT GOES BEYOND THAT THREE MILE LIMIT, INTO INTERNATIONAL WATERS, IS ENGAGED IN FOREIGN COMMERCE AND IS ENTITLED TO THE PROTECTION OF THE UNITED STATES CONSTITUTION.

I DON'T UNDERSTAND YOUR INTERPRETATION OF THE STATUTE WHEN YOU SAY THAT THE STATUTE SAYS THAT FOREIGN COMMERCE IS EXEMPT FROM ALL TAXATION. IT SEEMS TO ME IN READING SECTION 212 POINT 088, IT SAYS THE SALE OR USE OF VESSELS ON PARTS THEREOF USED IN INTERSTATE OR FOREIGN COMMERCE IS SUBJECT TO THE TAXES IMPOSED IN THIS CHAPTER ONLY TO THE EXTENT PROVIDED HEREIN. SO OBVIOUSLY TO SOME EXTENT, AND LATER ON IT SAYS THE BASIS OF THE TAX SHALL BE THE RATIO OF INTRASTATE MILEAGE TO ENTER TALT OR FOREIGN MILEAGE TRAVELED BY THE CARRIER'S VESSELS. SO APPARENTLY IT DOES CONTEMPLATE THAT VESSELS USED IN FOREIGN COMMERCE ARE TO BE TAXED TO AN EXTENT.

YES AND NO YOUR HONOR. YOU HAVE TO READ THAT STATUTE ALONG WITH SOME OTHER PROVISIONS OF CHAPTER 212. AND THE REGULATIONS THAT SAY --.

IF REGULATION LITTLE CONTRADICT THE STATUTE,.

REGULATIONS ELABORATE UPON THE STATUTE AND SAY AS THEY MUST, THAT FOR A VESSEL CONTINUOUSLY ENGAGED IN FOREIGN COMMERCE, THE MILEAGE, THREE MILES IN AND OUT OF FLORIDA ARE DISREGARDED. REGULATIONS VERY CLEAR ON THAT POINT.

AND THAT IS FOR A VESSEL THAT'S CONTINUOUSLY.

THAT'S CORRECT.

NOW IF WE WOULD DECIDE THAT THE VESSEL THAT IS GOING TO AND FROM THE BAHAMAS IS INVOLVED IN FOREIGN COMMERCE AT THAT POINT, BUT IS NOT INVOLVED IN FOREIGN COMMERCE WHERE IT IS MERELY PICKING UP PASSENGERS, GOING MERELY BEYOND THEY MILES, NOT TO EXCEED 12 MILES, AND THEN RETURNS, THEN THAT WOULD NOT BE IN FOREIGN COMMERCE CONTINUOUSLY? CORRECT?

IF YOU SO DECIDED THAT'S CORRECT, YOUR HONOR.

BUT YOU'RE SAYING WOULD BE A WRONG DECISION?

YES. BUT YOU STILL HAVE THE ISSUE OF HOW YOU DEAL WITH THAT MILEAGE THEN BETWEEN THE 3 MILES AND THE 12 MILES.

AND THIS IS THE ADMINISTRATIVE CODE, YOU FILED SUPPLEMENTAL AUTHORITY YESTERDAY. AS I BELIEVE WITH REGARD TO THAT?

YES, YOUR HONOR.

SO IN OTHER WORDS, IF YOU HAVE TO IN INTERPRETING THIS STATUTE REFER TO REGULATIONS OR OTHER STATUTES, THEN WE ARE REALLY TALKING ABOUT A STATUTE THAT IS NOT PLAIN IN ITS MEANING BUT A STATUTE THAT REQUIRES STATUTORY CONSTRUCTION, CORRECT?

I BELIEVE SO. CERTAINLY IN THIS CASE, YOUR HONOR.

AND THEN WHAT ABOUT THE RULE THAT ANY CLAIM OF EXEMPTION FROM TAXATION IS TO BE NARROWLY CONSTRUED AGAINST THE PARTY SEEKING THE EXEMPTION?

I BELIEVE YOU HAVE TO TAKE THAT PHRASE OR POLICY AND LOOK BROADER THAN THAT AT THE OTHER PROVISIONS IN CHAPTER 212 THAT REQUIRE TO BE CONSTRUED IN A CONSTITUTIONAL FASHION AND ALSO CONSIDERED AGAINST THE CONSTITUTIONAL BACKDROP THAT IS THE BASIS FOR THE ENACTMENT OF THE STATUTE.

EXPLAIN, MS. CARUSO SAID YOU'RE THE TAX EXPERT. EXPLAIN TO US THE USE TAX SEEKZ TO TAX

WHAT?

THE USE TAX IS A TAX UPON THE VALUE OF THE VESSELS HE WILL AND ALL ITS EQUIPMENT.

AND SO IF I HAVE -- WHAT ELSE DOES IT PERTAIN TO? FOR EXAMPLE, CORPORATIONS OPERATING IN FLORIDA THAT DO BUSINESS.

WELL, YES, OF COURSE YOUR HONOR. ANY COMPANY THAT BUYS A PIECE OF EQUIPMENT OUTSIDE OF FLORIDA BRINGS IT INTO FLORIDA FOR USE HERE IS SUBJECT TO USE TAX, WHICH IS A COMPENSATES THE SALES TAX. IF IT WERE, IF THE EQUIPMENT WERE PURCHASED IN FLORIDA, IS SUBJECT TO THE SALES TAX, IF IT IS PURCHASED OUTSIDE OF FLORIDA AND BROUGHT INTO FLORIDA, IT IS USE TAX.

SO THIS IS GAMBLING EQUIPMENT WAS PURCHASED SOMEPLACE -- WE ARE NOT TALKING ABOUT SALES TAX?

WELL, IT MAY BE EITHER OR, YOUR HONOR. BUT REMEMBER, YOU'RE TALKING ABOUT A VERY EXPENSIVE VESSEL HERE. AND LOTS OF VERY EXPENSIVE GAMING EQUIPMENT. AND THERE ARE A BUNCH OF MUD \$ED ISSUES HERE.

I DIDN'T THINK WE WERE TALKING ABOUT THE VALUE OF THE VESSEL. IS THAT INCLUDED?

YES WE ARE.

I THOUGHT IT WAS JUST THE GAMBLING EQUIPMENT.

GAMING EQUIPMENT. VALUE OF THE VESSEL. IT IS RENTAL ON GAMING EQUIPMENT. IT IS THE RENTAL ON CONCESSIONS. IT IS SOME DISCRETE TRANSACTIONS, THE SALES TAX INCLUDES MANY DIFFERENT TYPES OF TAXES ON DIFFERENT TYPES OF ACTIVITIES OR VALUE OF EQUIPMENT.

HAVE WE NOT IN FLORIDA DIFFERENTIATED BETWEEN A SALES OR USE TAX IN AN AD VALOREM TAX?

THE SALES TAX YOUR HONOR --.

FROM THE STATE CONSTITUTION, RERECOGNIZE THAT THERE IS A DIFFERENCE.

I BELIEVE WHEN YOU SAY AD VALOREM TAX, YOU'RE TALKING ABOUT A TAX ON REAL ESTATE OR PERSONAL AD VALOREM PERSONAL PROPERTY TAX. BUT AD VALOREM AS WE ALL KNOW MEANS TO THE VALUE AND WHEN YOU BUY A COMIC BOOK AND PAY A QUARTER FOR IT THESE DAYS, YOU PAY THE SALES TAX BASED ON THE QUARTER PURCHASE PRICE. THAT'S ON THE VALUE.

IF YOU BUY AN AUTOMOBILE UP IN THOMASVILLE INTENDING FOR USE BACK HERE IN TALLAHASSEE, STILL WOULD BE SUBJECT TO A USE TAX.

IT WOULD BE SUBJECT TO A USE TAX ON THE PURCHASE PRICE. ON THE VALUE YOU PAID FOR IT.

WOULD BE EQUIVALENT REALLY TO A SALES TAX IN THE FORM, IS THAT CORRECT?

THAT IS CORRECT, YOUR HONOR.

CAN YOU ADDRESS THE ARGUMENT YOU WERE ALLUDING TO EARLIER ABOUT THE FLAGSHIP VESSELS BEING SUBJECT TO TAX? AND YOU SAID THAT BECAUSE THIS WAS A FLAGSHIP OF THE BAHAMAS, FLORIDA HAS NO AUTHORITY UNDER THE COMMERCE CLAUSE TO TAX IT.

THAT'S THE HOLDING IN JAPAN LINE YOUR HONOR.

IF WE FOLLOW YOUR ARGUMENT TO ITS CONCLUSION THEN, DOES THE UNITED STATES THEN NOT HAVE POWER TO TAX ON SALES IN THE WATERS BETWEEN THREE AND 12 MILES?

I SUPPOSE THEY MIGHT ASSERT THAT, YOUR HONOR.

NO COURT HAS HELD THAT THOUGH, RIGHT?

NOT THAT I'M AWARE OF. THAT IS NOT THIS CASE.

IN FACT THE GAMBLING SHIP ACT IS I GUESS BASED ON THE ASSUMPTION THAT SALES TAX CAN BE IMPOSED ON THOSE VESSELS.

I DON'T THINK SO, YOUR HONOR. TO THE CONTRARY, THE GAMBLING SHIP ACT DEFINES THIS ACTIVITY AS FOREIGN COMMERCE.

BUT IT TAXES IT, DOESN'T IT?

NO.

WELL,.

THANK YOU VERY MUCH. BOTH OF YOU. HOW MUCH TIME FOR REBUTTAL?

COUPLE OF MINUTES, COUNSEL.

I'LL DO MY BEST. THANK YOU. THE FIRST --.

DID THE FOURTH DISTRICT, THE FOURTH DISTRICT DIDN'T SAY THEY WERE EXEMPT TOTALLY FOR TAXATION?

NO, THEY FOUND ALL THESE TRANSACTIONS WERE TAXABLE. IN FACT ALSO --.

I THOUGHT THEY USED ONLY THE MILEAGE ONE FLORIDA THOUGH WOULD REPRESENT THE ENUMERATER.

THEY DIDN'T REALLY EXPLAIN THE PRO RATION ISSUE.

SO WE HAVE -- WE HAVE A LOT OF CHOICES, EITHER NONE OF IT'S TAXED BECAUSE THEY HAVE A FOREIGN REGISTRY AND BECAUSE THEY GO BEYOND THE THREE MILE LIMIT. OR ONLY THE PART, FLORIDA MILES ARE TAXED OR ALL OF THE CRUISE FOR NOWHERE MILEAGE ARE USED IN THE PRO RATION. ARE THOSE THE THREE PRACTICAL CHOICES?

WELL I THINK THERE IS ONLY ONE CORRECT CHOICE, YOUR HONOR. WHICH IS AS WE HAVE DESCRIBED AND WHAT WAS IN THE NOTICE OF RECONSIDERATION. NOW THE FIRST THING I HAVE TO ADDRESS IS THIS. ALL THIS ARGUMENT ABOUT THIS STATUTORY SCHEME BEING AMBIGUOUS IS NONSENSE. THE STATUTE IS COMPLETELY UNAMBIGUOUS. ALSO, ALL THIS TALK ABOUT JAPAN LINE AND OTHER TAXES. THE TEST IN JAPAN LINE IS THIS, THEY'RE A SUBSTANTIAL RISK OF DOUBLE TAXATION? AND THE ANSWER IS NO. IF YOU READ THE DECISION IN DREAM BOAT, NEW SEA ESCAPE AND DEERBROOKE, THERE IS NOT ONE WORD OR SENTENCE IN ANY OF THOSE CASES WHICH SAYS THAT THESE VESSELS AND THE TRANSACTIONS THESE FLORIDA TRANSACTIONS ARE SUBJECT TO ANY OTHER TAX.

WHAT ABOUT THIS REGULATION THAT'S BEEN BROUGHT TO THE ATTENTION OF THE COURT?

THE REGULATION IS COMPLETELY CONSISTENT. WHAT IT SAYS IS WHEN YOU'RE INVOLVED IN FOREIGN COMMERCE ON ONE OF THESE BAHAMAS TRIPS, EVEN THOUGH YOU'RE TRAVELING THREE MILES OUT TO THE LIMIT OF FLORIDA, IT'S DID HE MINIMUM ANY MUST. SO YOU CAN TAKE THAT WHOLE 140 MILES TO THE BAHAMAS AND BACK AND CALL IT FOREIGN COMMERCE. THE DEPARTMENT'S TAX SCHEME IS ENTIRELY REASONABLE. WHAT THE TAXPAYER IS ARGUING HERE IS A EXTREME POSITION THAT CREATES A TAX FREE ZONE. AS I SAID, IF YOU READ THESE CASES IN THE RECORD, THERE IS NOT ONE BIT OF SALES TAX BEING PAID TO THE BAHAMAS, TO GEORGIA OR ANY OTHER JURISDICTION. AND THAT'S WHY FLORIDA CAN PROPERLY TAX ALL OF THESE. WE ARE NOT TAXING THE FOREIGN COMMERCE TO BAHAMAS TRIPS. AND AS THE COURT CORRECTLY RULED IN DREAM BOAT, THAT'S THE ANALYSIS THAT SHOULD BE UTILIZED BY THIS COURT. NOW I WANT TO JUST MENTION THE WILMINGTON --.

I'M AFRAID WE ARE GOING TO HAVE TO TAKE THE WILMINGTON CASE ON BRIEFS BECAUSE WE HAVE WELL EXCEEDED THE TIME.

I AM SORRY. THE CLOCK DIDN'T SEEM TO BE WORKING AND I APOLOGIZE.

WE APPRECIATE ESPECIALLY ALL OF YOU RESPONDING TO OUR QUESTIONS AND INQUIRIES. THANK YOU ALL VERY MUCH. COURT WILL NOW STAND IN RECESS UNTIL 8:30 TOMORROW MORNING.