IN THE SUPREME COURT OF FLORIDA

FLORIDA DEPARTMENT OF REVENUE

Petitioner,

v.

Case No. SC 02-2013
Lower Case No. 4D00-3873

NEW SEA ESCAPE CRUISES, LTD.,

Respondent.

_____/

BRIEF OF AMICUS CURIAE DEERBROOKE INVESTMENTS, INC. IN SUPPORT OF RESPONDENT, NEW SEA ESCAPE CRUISES, LTD., FILED BY CONSENT OF ALL PARTIES

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AMICUS CURIAE DEERBROOKE'S INTEREST IN THE CASE

Amicus curiae Deerbrooke Investments, Inc. ("Deerbrooke") submits this brief by consent of the parties in support of Respondent New Sea Escape Cruises, Ltd ("Sea Escape").

Deerbrooke is a Panamanian corporation which operated the vessel Palm Beach Princess (registered under the law of Panama) on gaming "cruises to nowhere" and cruises to The Bahamas from the Port of Palm Beach during 1997 and 1998. The Florida Department of Revenue ("DOR") conducted a sales and use tax audit of Deerbrooke's operations and issued a proposed assessment of Florida sales and use tax on the Palm Beach Princess and its leases and concessions based upon its determination that Deerbrooke was not engaged in "foreign commerce" on its cruises to nowhere and was entitled to the benefit of the exemption under Florida Statutes § 212.08(8) only with respect to its cruises to The Bahamas.

Deerbrooke contested such proposed assessment and the case is presently under consideration by the Fourth District Court of Appeal, *Deerbrooke Investments, Inc. v. Florida Department of Revenue*, Case No. 4D01-5043. The facts and legal issues presented in that case are virtually identical to those in the case at bar.

In this brief, amicus curiae Deerbrooke will argue that (i) the "territorial waters" of the United States extend only 3 miles from the coast of Florida so that the vessel operated by New Sea Escape, Ltd. entered international waters on its gaming cruises, and therefore (ii) New Sea Escape Cruises, Ltd. was engaged in "foreign commerce" within the meaning of Article I, § 8, of the Constitution of the United States on its cruises, entitling it to the benefit of the proration exemption under Florida Statutes § 212.08(8) and (iii) the commerce clause of the United States Constitution, as interpreted by the United States Supreme Court in *Japan Line*, prohibits Florida from imposing its sales and use tax upon Sea Escape's vessel, equipment and leases.

SUMMARY OF ARGUMENT

Under well-established law, the territorial limit of the United States is three miles from the shore. This conclusion is not affected by the Presidential Proclamation extending the territorial waters of the United States to twelve miles "for international law purposes"; by its own terms, the Proclamation has no effect upon federal or state jurisdiction or laws. The Congress has extended the territorial limit to twelve miles only for "criminal law purposes."

Since Sea Escape's vessel travels beyond the three-mile territorial limit of Florida and the United States into international waters on its gaming "cruises to nowhere," it is engaged in foreign commerce within the meaning of the United States Constitution. This conclusion is supported by a long line of federal and state decisions holding that vessels traveling into international waters, even between ports within the same state, are engaged in foreign commerce, and by the definition of foreign commerce contained in the federal statute under which Sea Escape's gaming cruises are conducted.

Since Sea Escape is engaged in foreign commerce, it is entitled to the protection of Florida Statutes, § 212.08(8), and the regulations promulgated thereunder, which apportions Florida sales and use tax of a vessel engaged in foreign commerce based upon its mileage within and without Florida territorial waters. The Florida courts have held that § 212.08(8) must be interpreted to prevent its application from violating the commerce clause of the United States Constitution. Under this statute and regulations, mileage from international waters to a Florida port, and from a port to international waters, is not considered mileage within Florida waters, and therefore Sea Escape is not subject to Florida sales and use taxation to any extent under this apportionment formula. Furthermore,

§ 212.08(8) must apply with equal force to the equipment and leases of the vessel, as they are "instrumentalities of foreign commerce."

The foreign commerce clause of the United States Constitution prohibits taxation of an instrumentality of foreign commerce in this case. Under the United States Supreme Court's *Japan Line* decision, an ad valorem tax upon an instrumentality of foreign commerce violates the foreign commerce clause of the United States Constitution if it either presents the risk of multiple taxation or frustrates the ability of the United States to "speak with one voice" with respect to foreign commerce matters. Since Sea Escape's vessel is foreign flagged, its "home port" may impose a similar tax, and thus DOR's position presents the proscribed risk of multiple taxation. Furthermore, as in *Japan Line*, the proposed tax frustrates uniformity of federal policy in foreign commerce matters. Accordingly, the proposed tax violates the foreign commerce clause of the United States Constitution, and cannot be imposed.

ARGUMENT

I. ***Sea Escape is Engaged in Foreign Commerce within the Meaning of the Constitution of the United States***

This issue raises a pure legal question to be decided by this Court *de novo*.

The lower appellate court stated as a fact in its opinion that Sea Escape's vessel cruised outside Florida territorial waters on its gaming cruises. *New Sea Escape Cruises, Ltd. v Florida Department of Revenue*, 823 So. 2d 161 (2002) at 162. In the seminal decision regarding whether such extraterritorial navigation into international waters is foreign commerce under the United States Constitution, the United States Supreme Court held in *Lord v. Steamship Company,* 102 U.S. 541 (1880), that a vessel engaged in oceanic navigation is necessarily engaged in foreign commerce within the meaning of Article I, § 8, of the United States Constitution, even when traveling between ports within the same state. In that case, the vessel Ventura was engaged in shipping between San Diego and San Francisco, California. In holding that the vessel was engaged in foreign commerce, the United States Supreme Court stated:

> Commerce includes intercourse, navigation, and not traffic alone. Commerce with foreign nations, ..., must signify commerce which, in some sense, is necessarily connected with these nations, transactions which either immediately or at some stage of their progress must be extra-territorial.
>
> The Pacific Ocean belongs to no one nation, but is the common property of all. When, therefore, the Ventura went out from San Francisco or San Diego on her several voyages, she entered on a navigation which was necessarily connected with other nations. While on the ocean her national character only was recognized, and she was subject to such laws as the commercial

> nations of the world had, by usage or otherwise, agreed on for the government of the vehicles of commerce occupying this common property of all mankind. She was navigating among the vessels of other nations and was treated by them as belonging to the country whose flag she carried. True, she was not trading with them, but she was navigating with them, and consequently with them was engaged in commerce. If in her navigation she inflicted a wrong on another country, the United States, and not the State of California, must answer for what was done. In every just sense, therefore, she was, while on the ocean, engaged in commerce with foreign nations. . . .

Id. at 544. Thus, it is extraterritorial ocean navigation, of the type engaged in by Sea Escape on its gaming cruises, which is "foreign commerce" under Article I, § 8, of the United States Constitution.

Similarly, in *The Abby Dodge*, 223 U.S. 166 (1912), the United States Supreme Court concluded that a sponge harvesting vessel sailing into international waters from the ports of Florida was engaged in foreign commerce:

> Undoubtedly, ... whether the Abby Dodge was a vessel of the United States or of a foreign nation, even although it be conceded that she was solely engaged in taking or gathering sponges in the waters which by the law of nations would be regarded as the common property of all and was transporting the sponges so gathered in the United States, the vessel was engaged in foreign commerce. . . .

Id. at 176.

Other appellate courts considering the issue have uniformly held that vessels cruising into international waters from ports in the same state are engaged in foreign commerce under the United States Constitution.[1]

In June, 2001, the Supreme Judicial Court of Maine also determined that vessels on whale-watching cruises from Maine ports were engaged in foreign commerce under the United States Constitution:

> If the Maine legislature intended the phrase [foreign commerce] to have the same meaning and be coextensive with the Commerce Clause, then we would likely have to interpret section 1760(41) as granting an exemption to watercraft carrying passengers onto international waters during its cruises. Precedent from the United States Supreme Court and other courts would dictate this result. When interpreting "foreign commerce" as it is used in the Commerce Clause, the Supreme Court has included within the meaning of that phrase a ship that carries passengers between ports in the same state but enters into international waters on its route.[2]

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[1] In *Sales Tax District No. 1 v. Express Boat Company*, 500 So. 2d 364 (La. 1987), the Louisiana Supreme Court held that vessels sailing to and from Louisiana to supply and support offshore oil drilling platforms were engaged in foreign commerce under the United States Constitution and were exempt from Louisiana sales tax. Furthermore, the Louisiana Court of Appeal held that vessels servicing the oil industry from Louisiana ports were engaged in foreign commerce and exempt from Louisiana ad valorem taxation. *Moonmaid Marine, Inc. v. Larpenter*, 599 So. 2d 820 (La. 1992).

[2] Nevertheless, the taxpayer conceded that Maine possessed the power to impose its use tax upon the whale-
(continued...)

Brent Leasing Co., Inc. v. State Tax Assessor, 773 A. 2d 457, 459-460 (Maine 2001). Thus, the Maine court concluded that whale-watching cruises entering international waters were engaged in foreign commerce within the meaning of the commerce clause of the United States Constitution.[3]

Furthermore, Petitioner operates its gaming cruises pursuant to express authority granted under federal law, 15 U.S.C. § 1171 *et. seq*., enacted in furtherance of Congressional power under

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(...continued)
watching vessels, because there was no risk of multiple taxation or impairment of federal uniformity under the *Japan Line* case discussed *infra*. *Brent Leasing Co., Inc. v. State Tax Assessor*, 773 A. 2d 457, 459-460 (Maine 2001) at 461. The Maine court then determined that the Maine use tax statute was intended to impose the use tax whenever constitutionally permissible. *Id.* at 461. In the instant case, however, the risk of multiple taxation clearly exists, and Florida may not impose its use tax without violating the foreign commerce clause of the United States Constitution.

[3] In *U.S. v. Montford*, 27 F. 3d 137 (1994), the Fifth Circuit Court of Appeals held that a gaming cruise to nowhere was not "foreign commerce" under a federal criminal statute, 18 U.S.C. § 1952. Obviously, that holding is limited to the particular statute under which a criminal conviction was sought, and the criminal statute involved there did not contain the precise definition of "foreign commerce" of the type found in the federal gaming statutes under which Sea Escape operates. In the absence of such a definition, the Court in *Montford* was free to interpret the statute as it thought appropriate. It should also be noted that the United States argued in *Montford* that a cruise to nowhere was "foreign commerce." For those reasons, *Montford* does not provide support for DOR's position in light of the clear definition of "foreign commerce" in the federal gaming statutes under which Sea Escape operates and the holding of the United States Supreme Court in *Lord v. Steamship Company.*

the United States Constitution to regulate foreign commerce. 15 U.S.C. § 1171(d) defines cruises to nowhere to constitute "foreign commerce:" "The term "interstate or foreign commerce" means commerce ... (2) between points in the same State ... but through anyplace outside thereof."[4] 15 U.S.C. § 1171(d). Thus, the precise federal statute under which Sea Escape conducts its gaming cruises defines such cruises as "foreign commerce."

Extraterritorial oceanic navigation as specified in *Lord v. Steamship Company* requires that a vessel be outside the territorial waters of a jurisdiction. 102 U.S. 541 (1880). Florida territorial waters extend for three miles off the Port of Palm Beach, and Sea Escape's vessel travels beyond Florida territorial waters on its cruises to nowhere. Fla. Const., Art. II, 1; St. ¶ 18; *New Sea Escape Cruises, Ltd. v Florida Department of Revenue*, 823 So. 2d 161 (2002) at 162. Furthermore, the territorial waters of the United States are generally coextensive with Florida territorial waters.[5] *U.S. v. Louisiana*, 363 U.S. 1 (1960). Thus, Sea Escape's gaming cruises

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[4] A number of other federal statutes define foreign commerce in the same way. *See* 7 U.S.C. § 499a(3); 7 U.S.C. § 610(j); 21 U.S.C. § 61(b); 27 U.S.C. § 211(a)(3).

[5] *U.S. v. McRary*, 665 F. 2d 674 (5th Cir. 1982) "[T]he territorial jurisdiction of the United States extends only three miles from this country's shores." *Id*. at 676.

are conducted outside the territorial waters of the United States, in international waters.

This conclusion is not affected by President Reagan's Presidential Proclamation extending the territorial waters to 12 miles for purposes of international law. Presidential Proclamation No. 5928, 54 Fed. Reg. 777 (Dec. 27, 1988). By its own terms, the Proclamation has no effect upon existing federal or state law.[6]

The First District Court of Appeal, in ***Dream Boat, Inc. v Department of Revenue***, 28 Fla. L. Weekly D 837, (1st D.C.A. Fla. March 27, 2003), concluded that the territorial waters of the United States extend 12 miles from the coast by reason of Presidential Proclamation 5928 and its adoption in the Antiterrorism and Effective Death Penalty Act of 1996, so that the gaming vessel involved in that case did not enter international waters and was therefore not engaged in foreign commerce. This conclusion is patently incorrect.

While the Antiterrorism and Effective Death Penalty Act of 1996 did adopt Presidential Proclamation 5928, it did so solely for purposes of federal ***criminal*** jurisdiction:

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[6] Presidential Proclamation 5928 provides: "Nothing in this Proclamation: (a) extends or otherwise alters existing Federal or State law or any jurisdiction, rights, legal interests, or obligations derived therefrom;".

> The Congress declares that all the territorial sea of the United States, as defined by Presidential Proclamation 5928 of December 27, 1988, **for purposes of Federal criminal jurisdiction** is part of the United States, subject to its sovereignty, and is within the special maritime and territorial jurisdiction of the United States for the purposes of title 18, United States Code.

Pub. L. 104-132, Title IX, § 901(a), Apr. 24, 1996, 110 Stat. 1317.

The scope of Presidential Proclamation 5928 is therefore strictly limited. By its own terms, it has no effect upon federal or state law or jurisdiction, and it has been adopted by the Congress to extend United States territorial waters to 12 miles only for purposes of federal criminal jurisdiction. It does not extend the United States territorial waters to 12 miles for purposes of determining whether an activity constitutes "foreign commerce."

The United States Second Circuit Court of Appeals considered this issue in *United States v. One Big Six Wheel*, 166 F. 3d 498 (1999), and it concluded:

> Section 901(a) alters United States boundaries, but not for all purposes. Although the increment of territorial waters is made "part of the United States," this occurs solely "for purposes of Federal criminal jurisdiction." [citation omitted] Although that same increment is implemented "for the purposes of title 18", that measure is itself limited to "the special maritime and territorial jurisdiction of the United States." [citation omitted] Therefore, section 901 is jurisdiction defining. **As the district court**

> **observed, to infer more would be to "read the phrase 'for purposes of federal criminal jurisdiction' out of the statute."**

Id. at 501.

Therefore, the territorial limit of the United States, for purposes of defining "foreign commerce", remains three miles from the coast of Florida, and is coextensive with Florida's territorial limit, which is also three miles from the Florida coast where Sea Escape's gaming cruises were conducted. Fla. Const., Art. II, 1; St. ¶ 18. Since Sea Escape's vessel cruised beyond the territorial waters of Florida, it also traveled beyond the territorial limits of the United States into international waters.

Sea Escape's gaming cruises are conducted in international waters, outside the territorial limits of the United States, and therefore the decisions of the United States Supreme Court in *Lord v. Steamship Company* and *The Abby Dodge* require a determination that Sea Escape is continuously engaged in "foreign commerce" under Article I, § 8, of the United States Constitution. If cargo ships, sponging vessels, oil industry supply vessels, and whale-watching cruises entering international waters during their cruises from ports within the same state are engaged in "foreign commerce" under the commerce

clause of the United States Constitution, then Sea Escape is necessarily engaged in foreign commerce on its cruises.

Sea Escape did not argue in the lower appellate court that it was engaged in foreign commerce on its cruises to nowhere, and it was apparently assumed that the vessel was engaged in intrastate commerce on those cruises. Thus, the lower court did not have the opportunity to consider whether Sea Escape was engaged in foreign commerce.

Nevertheless, as shown above, all the relevant constitutional authority confirms that a vessel cruising into international waters is engaged in foreign commerce within the meaning of Article I, § 8, of the United States Constitution. We therefore ask this Court to confirm and expand the lower court's decision, and hold that Sea Escape was engaged in foreign commerce on its cruises to nowhere.

II. ***Under Florida Statutes, § 212.08(8), Sea Escape is exempt from Florida Sales and Use Taxation***

This issue raises the pure legal question of whether the lower court erroneously interpreted and applied the law, and is reviewed by this Court *de novo*.

The Florida sales and use taxation of a vessel engaged in foreign commerce in Florida waters is governed by Florida Statutes § 212.08(8), which provides in relevant part as

follows:

> The sale or use of vessels and parts thereof used to transport persons or property in ... foreign commerce,..., is subject to the taxes imposed in this chapter only to the extent provided herein. The basis of the tax shall be the ratio of intrastate mileage to interstate or foreign mileage traveled by the carrier's vessels which were used in interstate or foreign commerce and which had at least some Florida mileage during the previous fiscal year. The ratio would be determined at the close of the carrier's fiscal year ....
>
> Items, appropriate to carry out the purposes for which a vessel is designed or equipped and used, purchased by the owner, operator, or agent of a vessel for use on board such vessel shall be deemed to be parts of the vessel upon which the same are used or consumed.

Thus, under this statutory provision, the Florida sales and use tax imposed on the value of a vessel and its equipment engaged in foreign commerce is apportioned based upon the ratio of the vessel's mileage within Florida waters to total mileage. This apportionment formula is designed to avoid imposing an unduly burdensome tax upon a vessel engaged in foreign commerce in violation of the provisions of Article I, § 8, of the United States Constitution. *Tropical Shipping & Construction, Ltd. v. Askew*, 364 So. 2d 433 (Fla. 1978).

Florida Administrative Code Rule 12A-1.064(5) provides detailed regulations for implementing the apportionment formula

contained in Florida Statutes, § 212.08(8). It provides in relevant part:

> However, mileage of such vessels from the territorial limit to port dockside and return into international waters, foreign or coastwise, in the continuous movement of persons or property in interstate or foreign commerce, is not considered to be mileage in Florida.

Accordingly, because Sea Escape is continuously engaged in foreign commerce within the meaning of the United States Constitution, Article I, § 8, it will have no mileage in Florida under the apportionment formula, and will not be subject to Florida sales and use tax to any extent. This provision of the regulations prevents an unconstitutional application of the Florida sales and use tax under the United States Supreme Court's decision in *Japan Line,* discussed in detail below.

The § 212.08(8) exemption also extends to the equipment on the vessel "appropriate to carry out the purposes for which a vessel is designed or equipped and used." Accordingly, the exemption extends to all gaming equipment aboard Sea Escape's vessel, because this equipment is appropriate to carry out its purposes.

The lower court erroneously determined that Sea Escape's gaming equipment is subject to Florida's sales and use tax, and that its arrangement with Tropical Gaming, Inc. was a taxable

lease or license. Under the United States Supreme Court's decision in *Japan Line*, *infra*, the equipment and lease are "instrumentalities of foreign commerce," and because § 212.08(8) must be construed consistently with its constitutional purpose, the § 212.08(8) exemption applies to such equipment and leases as well.

Since Sea Escape was engaged in "foreign commerce" within the meaning of Article I, § 8, of the United States Constitution on its daily cruises, § 212.08(8) applies to exempt Sea Escape's vessel and all its ancillary equipment, including gaming equipment, from Florida sales and use tax. Furthermore, a lease or license of such equipment is defined as a "sale" by § 212.02(15)(a), and is also exempt under § 212.08(8). We therefore urge this Court to expand the lower court's decision and hold that § 212.08(8) applies to exempt Sea Escape's vessel from Florida sales and use tax, and reverse the lower court's decision that its gaming equipment and the lease or license to Tropical Gaming, Inc. is subject to Florida's sales and use tax.

III. ***The United States Constitution Prohibits Florida from Imposing its Sales and Use Tax Upon Sea Escape and its Equipment and Leases***

This issue raises the pure legal question of whether the lower court erroneously interpreted and applied the law, and is reviewed by this Court *de novo*.

DOR's position that Sea Escape's vessel, gaming equipment and leases are taxable cannot withstand scrutiny under the foreign commerce clause of the United States Constitution. In the seminal decision on the issue, *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434 (1979), the United States Supreme Court analyzed the application of California's *apportioned* ad valorem tax to shipping containers whose "home port" was in Japan.

The United States Supreme Court first determined that the four-pronged test for the application of a tax to interstate commerce was inadequate for testing a tax applied to foreign commerce.[7] *Id.* at 446-47. In its holding, the Court established an additional two-pronged test for the validity of a state tax on instrumentalities of foreign commerce:

> Because California's ad valorem tax, as applied to appellant's containers, results in multiple taxation of the instrumentalities of foreign commerce, and because it prevents the Federal Government from "speaking with one voice" in international trade, the tax is inconsistent with Congress' power to regulate

[7] It is conceded that the four-part test of *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274 (1977), is satisfied in this case.

> Commerce with foreign Nations. We hold the tax, as applied, unconstitutional under the Commerce Clause.

Id. at 453-54.

Regarding the risk of multiple taxation, the Court stated:

> . . . neither this Court nor this Nation can ensure full apportionment when one of the taxing entities is a foreign sovereign. If an instrumentality of commerce is domiciled abroad, the country of domicile may have the right, consistent with the custom of nations, to impose a tax on its full value. If a State should seek to tax the same instrumentality on an apportioned basis, multiple taxation inevitably results.... Due to the absence of an authoritative tribunal capable of ensuring that the aggregation of taxes is computed on no more than one full value, a state tax, even though fairly apportioned to reflect an instrumentality's presence within the State, may subject foreign commerce "to the **risk** of a double tax burden to which [domestic] commerce is not exposed and which the commerce clause forbids."

Id. at 447, 448.

Since Sea Escape is continuously engaged in foreign commerce, as defined by the United States Supreme Court's decision in *Lord v. Steamship Company*, DOR's application of Florida's sales and use tax must satisfy the additional two-pronged test of *Japan Line*, which it cannot do. In particular, DOR must ensure that its application of Florida's sales and use tax does not present the risk of multiple taxation proscribed by *Japan Line*.

In this case, Sea Escape's vessel's "home port" is a foreign nation. As acknowledged by the United States Supreme Court, its home port has the power under international law to tax the full value of Sea Escape's vessel, leases and equipment. *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 447 (1979).

Furthermore, since Sea Escape is regularly in The Bahamas, that nation might also seek to impose a tax upon Sea Escape, and such equipment and leases, in a manner similar to DOR's imposition of Florida's tax. This is the multiple taxation squarely proscribed by *Japan Line*.

Multiple taxation would not be present if the tax were imposed on a discrete transaction occurring only in one jurisdiction,[8] *Wardair Canada, Inc. v. Florida Department of Revenue*, 477 U.S. 1, 9 (1986), or where the state tax applies a credit for the tax paid in a foreign jurisdiction.[9] *Itel Containers v. Huddleston*, 507 U.S. 60, 74 (1993). In this case, Sea Escape's vessel and its leases and equipment are not a

[8] In *Wardair*, the United States Supreme Court upheld a sales tax upon fuel used in foreign commerce, pointing out that the home port of the aircraft could not also impose a tax on the sale of the fuel.

[9] In *Itel*, the United States Supreme Court upheld a sales tax imposed by Tennessee upon containers used in foreign commerce. There was no risk of multiple taxation because the Tennessee statute provided for a credit for a tax imposed upon the containers by a foreign jurisdiction.

discrete transaction which is not susceptible of taxation by a foreign jurisdiction; to the contrary, the vessel might be taxed by its home port and The Bahamas. Furthermore, Florida does not provide a credit against its sales and use tax for tax paid to a foreign jurisdiction – the credit only extends to a "like tax" paid to another state, territory of the United States or the District of Columbia. Fla. Stat. § 212.06(7). Therefore, the multiple taxation proscribed by all the United States Supreme Court decisions on the issue is present in this case.

Japan Line also prevents Florida from imposing its sales and use tax in a manner which may frustrate national foreign policy.

Thus, in accordance with the *Japan Line* decision of the United States Supreme Court, the foreign commerce clause of the United States Constitution totally preempts Florida's power to impose a tax upon Sea Escape and its equipment and leases, because of the risk of multiple taxation by several jurisdictions and potential frustration of United States foreign policy. Therefore, this Court should therefore hold that Sea Escape and its equipment and leases are not subject to Florida's sales and use tax by reason of the commerce clause of the United States Constitution.

IV. ***Conclusion***.

For the reasons set forth above, this Court should hold that Sea Escape is engaged in foreign commerce and therefore its vessel, equipment and leases are not subject to Florida sales and use taxation under Florida Statutes § 212.08(8) and the Constitution of the United States.

CERTIFICATE OF SERVICE

I hereby certify that a copy hereof has been furnished by United States mail to Nicholas Bykowsky, Esq., and Martha F. Barrera, Esq., Assistant Attorneys General, Office of the Attorney General - Tax Section, The Capitol, Tallahassee, FL 32399-1050, counsel for Petitioner, Florida Department of Revenue; and Edna L. Caruso, Barristers Building, 1615 Forum Place, Suite 3A, West Palm Beach, FL 33401, counsel for Respondent, New Sea Escape Cruises, Ltd., this 14th day of August, 2003.

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CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

I hereby certify that the foregoing complies with the font requirements of Fla. R. App. P. 9.210(a)(2) by being submitted in Courier New, 12 point font.

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