If you want to get into the Jones Act game, you've got to embrace Uncle Sam

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European shipowners may want to grab a slice of the US shipping market via international trade negotiations — but do they know that means embracing Uncle Sam and especially US government taxation?

When people think of the US domestic maritime market, they think of the "Jones Act," which is really a set of laws, and not a single act, that restricts US domestic trade to US-flag vessels owned and controlled by US citizens and constructed in the US.

Indeed, the Jones Act is important to the structure of the domestic US maritime market. But it is not the only law governing US domestic trade.

Naturally, anyone engaged in US interstate commerce must comply with a score of US laws regulating safety, worker's rights, environmental protection and many, many other matters, and, most particularly, requiring the payment of taxes to Uncle Sam. The same principle applies in Norway, Denmark and Greece.

So, as one would expect, vessel owners, operators and their crews operating in the Jones Act trades all pay local, state and federal US taxes. This is a logical consequence of the US, like other countries, taxing economic activity that occurs within its borders.

Most non-US companies today do what they can to avoid these US taxes. For example, non-US-flag vessel owners supporting the oil and gas industry in the US Gulf of Mexico usually go to some lengths to limit their US tax exposure and the tax exposure of their crews when operating in US domestic commerce.

Uncle Sam, acting through his agent — the Internal Revenue Service (IRS) — has taken a dim view of these efforts and has aggressively enforced US tax laws on vessels operating in US waters regardless of the flag flown. In fact, the IRS has started using a range of industry sources to keep track of non-US vessels in the US Gulf of Mexico and has made it increasingly difficult for foreign owners to avoid making US tax filings.

If the Jones Act were repealed, fundamental fairness would dictate that foreign owners operating in US waters would have to comply with all US laws applicable to the

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US and interstate commerce, regardless of whether the commerce occurs on land or water. Foreign owners are dreaming if they believe that repeal or modification of the Jones Act will permit them to operate in US waters competing with US citizens paying US taxes and not have to bear those very same tax burdens.

If the US government were to do otherwise, it would advantage foreign citizens over US taxpaying citizens performing the exact same services or competing services. The US government might as well permit non-US citizens to purchase US counties and make them separate countries not subject to US law in their economic activities. No principle of free international trade is served by letting foreign shipowners operate in the US exempt from the US laws applicable to all participants in US domestic trade.

This is not to say the Jones Act is merely a requirement imposing US domestic laws on the maritime industry.

The Jones Act's US-flag, citizenship and US-build requirements have their own benefits and effects and may be the subject of international trade negotiations.

But foreign owners may not like the result even if they succeed in poking holes in the Jones Act when they find out that their crews must be US citizens or permanent US residents, that the crews will have collective bargaining rights unheard of with open-registry vessels, while the owner, the operator, manager and the crew will all have to pay US local, state and federal income taxes.

Perhaps this is all well understood among those seeking Jones Act exemptions. But they should remember that once they embrace Uncle Sam, it is up to Uncle Sam to decide when the embrace ends.

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