

# PROFESSIONAL MARINER

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Foreign-flag operators in the Gulf of Mexico target of stepped up U.S. tax enforcement  
[Rich Miller](#)

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The Internal Revenue Service (IRS) is stepping up enforcement on foreign vessels working in the oil and gas industry on the Outer Continental Shelf (OCS) after determining that "a significant number" aren't complying with U.S. tax regulations.

Three categories of foreign taxpayers are identified in a directive to IRS field workers that was posted Oct. 30, 2009, on the agency's Web site: contractors who perform services on the OCS in the Gulf of Mexico, such as seismographic testing, drilling, repair and salvage work; vessel operators who transport supplies and personnel between U.S. ports and locations on the OCS; and owners or operators of foreign-registered vessels that "bareboat" or time charter to people engaged in activities related to offshore exploration.

"In recent years, an increased number of foreign vessels have applied to enter and work in the OCS," wrote Keith M. Jones, industry director of Natural Resources and Construction for the IRS. "Our analysis indicates that a significant number of foreign vessels permitted to work in the OCS do not comply with U.S. filing requirements."

William Pfeil, a technical adviser for marine shipping in the IRS's Large and Mid-size Business Division, said the directive involves corporate income taxes, employment taxes and individual withholding taxes. While Pfeil said he couldn't comment on how many foreign vessels were involved or how much revenue might have been lost, "We suspect the noncompliance has been going on for many, many years." When asked to be more specific, he replied, "More than five years."

Pfeil said the IRS has formed an issue management team to work with foreign companies that have not filed or have not filed properly.

"We're looking for voluntary compliance," he said. "We have had responses of various degrees,

saying that one, we didn't know we had a filing requirement; two, we didn't realize we were subject to tax; three, we need a period of 60 days to evaluate our situation to determine if in fact we have a tax exposure; four, we're not sure. ... Many of them have gone out and engaged tax representatives to assist them in their determination."

Pfeil said the IRS has been granting 60-day extensions when they are requested.

"When they respond to us, we have done that," he said. "We are looking at them to come in and make it right, and we're going to work with them."

Ken Wells, president of the Offshore Marine Service Association (OMSA), said U.S. mariners stand to benefit from the IRS action. OMSA represents the owners and operators of U.S.-flagged offshore service vessels, along with the American shipyards and businesses that support the industry.

"First, lax compliance by foreign vessels has allowed them to underbid U.S. boats, costing American crews work," he said. "If you level the playing field, it means more work for U.S. vessels and their U.S. crews. Beyond that, if the foreign owners have not been taking out withholdings for foreign seafarers, that is a big issue. Look at it this way: U.S. mariners are already at a disadvantage because foreign labor can be brought in below U.S. wages. If the vessel owners have not had to take out withholding taxes on top of that, it only increases the disadvantage to Americans."

Foreign operators can file for exemptions from U.S. taxes under bilateral income tax treaties, but Pfeil said such claims are often invalid.

"Where the issue generally comes about is the international exemption of ships when they're engaged in transportation activity," he said. "I define transportation as movement of, say, cargo from London, England, to New York by a vessel. That vessel is engaged in providing international transportation, just like an airline would if it traveled internationally. But if you have a seismic research vessel working on the continental shelf, they're not engaged in international transportation — they're engaged in business profits on the continental shelf. We believe that many taxpayers, if they file, are claiming an exemption that they're not entitled to."

While the IRS action is not linked to a recent review of foreign vessel activity in the Gulf of Mexico by U.S. Customs and Border Protection, Wells said both endeavors send a powerful message.

"We see two branches of the (Obama) administration getting tough on lax compliance by foreign vessels," he said. "The IRS is going at it from a tax standpoint and Customs and Border Protection is considering a proposal that would restore the original intent of the Jones Act for boats that work

in offshore installation projects. The combined effect is the administration saying that we are not going to sit by and watch foreign vessels take away jobs from Americans and cheat on their taxes."

*Rich Miller*