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Company Is Foreign at Tax Time, but Seeks Americans-Only Work

By DAVID CAY JOHNSTON

A big oil-well drilling company that has used one law to escape American taxes by taking addresses in Bermuda and Barbados is now trying to use another law to qualify for business open only to American companies.

Competitors are crying foul, saying they cannot survive if the Bermuda-Barbados company, Nabors Industries, is allowed to vie for contracts while paying little or nothing in taxes.

The competitors, most of them family-owned businesses, say that unless Congress acts to level the playing field they will lose so much business to Nabors that they will go broke within a decade or be forced themselves to try to become Bermuda companies so they can also escape taxes.

The issue is part of a much larger debate about how a hodgepodge of tax laws enacted starting in 1986 give big advantages to multinational concerns over domestic companies.

The debate comes as official reports show that corporate tax revenues are plummeting because of a weaker economy and tax shelters, with the Congressional Budget Office estimating it will raise \$136 billion this year, down from \$207 billion just three years ago.

Nabors Industries is the nation's largest operator of oil-well drilling rigs and has its working headquarters in Houston. But since late 2001 the company has used a Bermuda maildrop as its tax headquarters and a Barbados office as its legal headquarters.

There is no corporate income tax in Bermuda and under a treaty with Barbados, profits are taxed at 1 percent. The United States corporate tax rate is 35 percent. The savings to Nabors was \$10 million last year.

Now Nabors wants to qualify fully for business under the Jones Act, which since 1916 has required that ships engaged in purely domestic trade be built in American shipyards, owned by American companies

and operated by American crews. Nabors owns 33 ships serving oil drilling platforms, a tenth of the fleet of about 350 ships that ferry supplies like drill pipe in the Gulf of Mexico.

Nabors argues that its American subsidiary qualifies it for business under the Jones Act, and that under a 1996 law that allows foreign financing of such ships, its Bermuda parent is simply providing the money for these ships.

Competitors call the arrangement improper, and have some support in Congress.

Minor Cheramie Jr. of Golden Meadow, La., whose family operates 18 Jones Act ships, called it "grossly unfair that we pay taxes for certain services and this big corporation goes foreign and they get the benefit of the same services without paying for them."

He said that because Nabors pays little in taxes it can underbid competitors, growing until it dominates the industry.

If Congress lets Nabors keep its ships and operate more, Mr. Cheramie said, "I won't have a choice but to become a Bermuda company."

Each side is seeking a rider to one of the appropriations bills expected to be voted on in the next few weeks that would put its stance into law. No bill has been introduced and Congress has not held any hearings, which is common with special-interest legislation affecting taxes.

Calls to Nabors offices in Houston and Barbados were not returned. A Nabors lobbyist, Kenneth J. Kies, expressed confidence that Congress would back the company, but would not say who was taking its case forward. Some senators and congressmen who rivals said were Nabors's supporters said they were not involved.

Nabors's opponents are more vocal. Representative David Vitter, Republican of Louisiana, said Congress never intended to create a loophole for foreign companies like Nabors to finance an American subsidiary. "This was for a bona fide bank" to provide financing, he said, calling the Nabors arrangement "an abuse."

Representative Gene Taylor, Democrat of Mississippi, said he was "angry" that a company that became foreign so it would not have to pay taxes still gets all the benefits the taxpayers provide, with the Coast Guard to rescue their ships if they get in trouble and the Navy Seals if they are attacked by terrorists.

"They have an advantage against companies that pay taxes."

Last year Nabors paid 7 cents in taxes out of each dollar of profit.

Mr. Taylor said the 1996 law "was presented to Congress as a way for these ship companies to lower their financing costs, but turns out to have been cleverly written to give a competitive advantage" to

foreign companies.

Mr. Kies, the Nabors lobbyist, said the Nabors arrangement complied with the 1996 law. "Those are the guys we like to call the whiners," Mr. Kies said of the other shipowners.

"There is nothing unfair" about what Nabors has done, he added.

Mr. Kies agreed that Nabors pays a much lower tax rate than the other companies because of its Bermuda arrangement. He added that he was certain that the competitors would not be able to lower their tax rates by making Bermuda their tax headquarters because Congress would enact a ban on such moves, making it retroactive to last year.

While that may seem unfair, Mr. Kies said, the issue is better viewed as just "one loony example" of "a corporate tax system that is really bizarre."

Mr. Kies, who was chief of staff for Congress's Joint Committee on Taxation in the mid-1990's, said that without fundamental change many more such examples will come to light as some companies take advantage of what the law allows to cut their tax rates, leaving competitors at a disadvantage. And, he said, foreign companies will continue to expand in the United States because of tax rules that favor them over American-owned companies.

The result, he said, will be that American companies will wither, creating few jobs, while competitors flourish.

A French company, Groupe Bourbon, is financing 10 ships being built in Alabama that will be owned in part by Larry Rigdon, a New Orleans ship entrepreneur. He says these ships also qualify under the Jones Act.

Representative Taylor, who represents the Mississippi Gulf Coast, said, "We could have taxpaying American companies building those ships."

Nabors and Groupe Bourbon can convert otherwise taxable profits earned in the United States into tax deductible expenses paid to the offshore parent in the form of interest, royalties and fees.

Laney Chouest, whose family company operates 10 Jones Act ships and employs 4,000 people in Galliano, La., said he was astonished that members of Congress would even take up the cause of foreign-owned companies against family-owned American businesses.

"Should foreign-owned companies like Nabors have these lobbying rights?" he asked.

"If what's going on is some in Congress want to get rid of corporate taxes, then, fine, let's debate that, but

not just for some foreign-owned companies" while companies like his must continue to pay taxes.

Last year, news that companies were using Bermuda maildrops to escape taxes angered many voters. On Capitol Hill, Republicans and Democrats competed to make the toughest statements about acting against companies that moved offshore to escape taxes.

Congress passed a law that appeared to ban companies that acquired a Bermuda tax address from getting federal contracts. But a close reading of the law showed that it explicitly allowed American subsidiaries of the Bermuda companies to hold federal contracts.

Congress did not enact any laws to either stop the Bermuda moves or to protect domestic companies from those that use a Bermuda mailbox to operate nearly tax-free.

Bob Alario, president of the Offshore Marine Service Association in New Orleans, which represents the competing shipowners, said that Gene M. Isenberg, Nabors's chief executive, told them he was confident Congress would eliminate any doubt as to the Jones Act qualification of his company's 33 ships and would allow Nabors to expand.