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## **Electing Out of Subchapter K for Energy Joint Ventures**

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# Electing Out of Subchapter K for Energy Joint Ventures

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## The Basics of the Election Out

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## Partnership Definition

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- Federal income tax law provides a broad definition of a partnership.
  - A partnership includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a corporation or a trust or estate. Code § 761(a).
- At a minimum, a partnership requires:
  - One or more persons.
  - Joint operation of a business or venture.
  - A joint profit motive. See Treas. Reg. § 301.7701-1(a)(2) (the famous ditch example).

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## Unincorporated Partnerships

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- Various unincorporated organizations and arrangements may give rise to a partnership for federal income tax purposes, including:
  - Co-ownership of property.
  - Principal-agent relationship.
  - Seller-purchaser relationship.
  - Lessor-lessee relationship.
  - Activities under a joint operating agreement (JOA).
  - Activities under a joint development agreement (JDA).
  - Certain other contractual relationships (e.g., licensing arrangements).

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