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Electing Out of Subchapter K for Energy Joint Ventures

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1

The Basics of the Election Out

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2

2

Partnership Definition

- 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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3

3

Unincorporated Partnerships

- 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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4

4

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