

PRESENTED AT

The 16th Biennial Parker C. Fielder Oil, Gas, and Energy Tax Conference

November 16-17, 2023

Houston, TX

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

Steven J. Lorch

Author Contact Information:

Steven Lorch
Bracewell LLP
New York, NY

Steven.lorch@bracewell.com
212-508-6176

16th Biennial Parker C. Fielder
Oil, Gas, and Energy Tax Conference

Electing Out of Subchapter K for Energy Joint Ventures

Steven J. Lorch
Bracewell LLP

BRACEWELL

© 2023 Bracewell LLP

1

The Basics of the Election Out

BRACEWELL

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).

BRACEWELL

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).

BRACEWELL

4

4

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Electing Out of Subchapter K for Energy Joint Ventures

Also available as part of the eCourse

[2023 Biennial Parker C. Fielder Oil, Gas, and Energy Tax eConference \(audio only\)](#)

First appeared as part of the conference materials for the
16th Biennial Parker C. Fielder Oil, Gas, and Energy Tax Conference session
"Partnerships and Pass Through Entities"