



## Tax Reduction Letter

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### **Entities: Sole Proprietor, Partnership, Limited Liability Company/Partnership (LLC/LLP), Corporation, Subchapter S Corporation**

**Question:** Can a husband and wife operate a business as a sole proprietorship or do they need to be a partnership?

**Answer:** Unless a business meets the requirements listed below to be a qualified joint venture, a sole proprietorship must be solely owned by one spouse, and the other spouse can work in the business as an employee. A business jointly owned and operated by a husband and wife is a partnership unless the spouses elect to be treated as a Qualified Joint Venture or, in a community property state, Rev. Proc. 2002-69 applies.

A married couple who jointly own and operate a trade or business may choose for each spouse to be treated as a sole proprietor by electing to file as a “qualified joint venture.” Requirements for a qualified joint venture:

- The only members in the joint venture are a husband and wife who file a joint tax return,
- The trade or business is owned and operated by the spouses as co-owners (and not in the name of a state law entity such as an LLC or LLP),
- The husband and wife must each materially participate in the trade or business, and
- Both spouses must elect qualified joint venture status on Form 1040 by dividing the items of income, gain, loss, deduction, credit and expenses in accordance with their respective interests in such venture and each spouse filing with the Form 1040 a separate Schedule C, C-EZ, or Form 4835 accordingly, and, if required, a separate Schedule SE to pay self-employment tax.

The qualified joint venture rules are effective for taxable years beginning after December 31, 2006. For more information see Election for Husband and Wife Unincorporated Businesses.

Husband and wife businesses in community property states may sometimes qualify to be treated similarly to a sole proprietorship. For *Special Rules for Spouses in Community States* see Rev. Proc. 2002-69 and the Instructions for Schedule C.

Updated by the IRS March 21, 2012. See <http://www.irs.gov/faqs/faq/0,,id=199630,00.html>.