When Both Spouses Share a Business

When married taxpayers share a business operation or include family members as employees, certain tax treatments and employment tax rules apply. This document outlines facts to know when the taxpayer works with a spouse, parent or child and how the Tax Help Program can provide assistance to the taxpayers.

➤ Scenario: Both spouses carry on a trade or business.

If both spouses carry on a business together and share in the profits and losses, they may be “partners” whether or not they have a formal partnership agreement. In this case, they would not report the income or loss from the business on **Schedule C**, *Profit or Loss From Business* but instead on **Form 1065**, *U.S. Return of Partnership Income*.

Form 1065 is out of scope for VITA and also not prepared by Special Tax Services. In order to proceed in the Tax Help Program, the spouses can instead elect not to treat the joint venture as a partnership, but rather as a qualified joint venture.

A **qualified joint venture** is a business type in which:

- The only owners are a married couple who file a joint return; and
- Both spouses materially participate in the trade or business, and
- Both spouses choose not to be treated as a partnership for tax purposes, a so-called qualified joint venture election.

Only businesses owned and operated by spouses as co-owners and not in the name of a state legal entity (such as a limited partnership or limited liability company) are eligible for the qualified joint venture election. Qualified joint venture election is in scope for VITA and accepted by Special Tax Services.

For more information on joint ventures, see IRS **Publication 541**, *Partnerships*.

➤ How to Assist the Taxpayer with a Qualified Joint Venture Election

Spouses who elect qualified joint venture status are considered **sole proprietors** for federal tax purposes. In this scenario, the tax return will include a separate **Schedule C** for each spouse even though they are filing jointly and share the business.

1. Confirm that no aspect of the business is out of scope for VITA (eg, a business loss, paid helpers, etc.). If so, refer the taxpayers to Special Tax Services. See "About Special Tax Services (STS) and STS Referrals."
2. Ask the spouses which share of the profits and expenses from the business each will declare on their respective **Schedule C**.
3. Prepare the tax return using Married Filing Jointly (MFJ) filing status. Include a separate **Schedule C** for each spouse that reports their individual share of the profits and expenses.

Note: The spouse-owners in a qualified joint venture do not need an Employment Identification Number (EIN) unless their sole proprietorship must file excise, employment, alcohol, tobacco or firearms returns. One spouse cannot use the partnership's EIN for the qualified joint venture for an individual return. The EIN must stay with the partnership; it is used by the partnership for any year in which the business doesn't meet qualified joint venture requirements.