



Married Couples in Business

One of the advantages of operating your own business is hiring family members. However, the employment tax requirements for family employees may vary from those that apply to other employees. Below, we point out some issues to consider when operating a business as a married couple.

How spouses earn Social Security benefits

A spouse is considered an employee if there is an employer/employee type of relationship, i.e., the first spouse substantially controls the business in terms of management decisions and the second spouse is under the direction and control of the first spouse. If such a relationship exists, then the second spouse is an employee subject to income tax and FICA (Social Security and Medicare) withholding. However, if the second spouse has an equal say in the affairs of the business, provides substantially equal services to the business, and contributes capital to the business, then a partnership type of relationship exists and the business's income should be reported on [Form 1065, U.S. Return of Partnership Income](#) [PDF](#) (PDF).

Both spouses carrying on the trade or business

On May 25, 2007 the Small Business and Work Opportunity Tax Act of 2007 was signed into law and affect changes to the treatment of qualified joint ventures of married couples not treated as partnerships. The provision is effective for taxable years beginning after December 31, 2006.

The provision generally permits a qualified joint venture whose only members are a married couple filing a joint return not to be treated as a partnership for Federal tax purposes. A qualified joint venture is a joint venture involving the conduct of a trade or business, if (1) the only members of the joint venture are a married couple who file a joint tax return, (2) both spouses materially participate in the trade or business, (3) both spouses elect to have the provision apply, and the business is co-owned by both spouses and (4) isn't held in the name of a state law entity such as a partnership or limited liability company (LLC).

Under the provision, a qualified joint venture conducted by a married couple who file a joint return is not treated as a partnership for Federal tax purposes. All items of income, gain, loss, deduction and credit are divided between the spouses in accordance with their respective interests in the venture. Each spouse takes into account his or her respective share of these items as a sole proprietor. Thus, it is anticipated that each spouse would account for his or her respective share on the appropriate form,

such as Schedule C. For purposes of determining net earnings from self-employment, each spouse's share of income or loss from a qualified joint venture is taken into account just as it is for Federal income tax purposes under the provision (i.e., in accordance with their respective interests in the venture).

This generally does not increase the total tax on the return, but it does give each spouse credit for social security earnings on which retirement benefits are based. However, this may not be true if either spouse exceeds the social security tax limitation. Refer to [Publication 334, Tax Guide for Small Business](#), for further information about self-employment taxes. For more information on qualified joint ventures, refer to [Election for Married Couples Unincorporated Businesses](#).

One spouse employed by another

If your spouse is your employee, not your partner, you must pay Social Security and Medicare taxes for him or her. The wages for the services of an individual who works for his or her spouse in a trade or business are subject to income tax withholding and Social Security and Medicare taxes, but not to FUTA tax. For more information, refer to [Publication 15, Circular E, Employer Tax Guide](#).

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