

**REVENUE PROCEDURE 2002-69:
CLASSIFICATION OF CERTAIN BUSINESS ENTITIES**

This Revenue Procedure provides useful guidance on the classification of “qualified entities” for federal income tax purposes. A business entity is a “qualified entity” if:

The business entity is wholly owned by a husband and wife as community property under the laws of a state, a foreign country, or a possession of the United States;

No person other than one or both spouses would be considered the owner for federal tax purposes; and

The business entity is not treated as a corporation under Section 301.7701-2.

The Revenue Procedure holds that if the entity in question is a qualified entity, and husband and wife, as community property owners, treat the entity as a disregarded entity, the Service will respect that position.

If the entity in question is a qualified entity and husband and wife, as community property owners, treat the entity as a partnership for Federal tax purposes, the Service will respect that position.

The widespread use of Special Purpose Entities (SPE) in real estate transactions creates a unique issue for 1031 investors. Husband and wife who desire to acquire title to replacement property through an SPE would not be deemed a disregarded entity and would likely be considered a partnership for Federal tax purposes. The acquisition of a partnership interest is non-qualifying property for purposes of IRC Section 1031. This Rev. Proc. would allow community property owners to utilize the SPE and not run afoul of this restriction.

PLR 0201024: Dual Member LLC – where lender concerns about a Taxpayer’s ability to take an SPE into bankruptcy are at issue, practitioners should consider the “hybrid dual member LLC” ruling issued to Chicago Deferred Exchange Corporation and discussed further at page 87 infra.

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