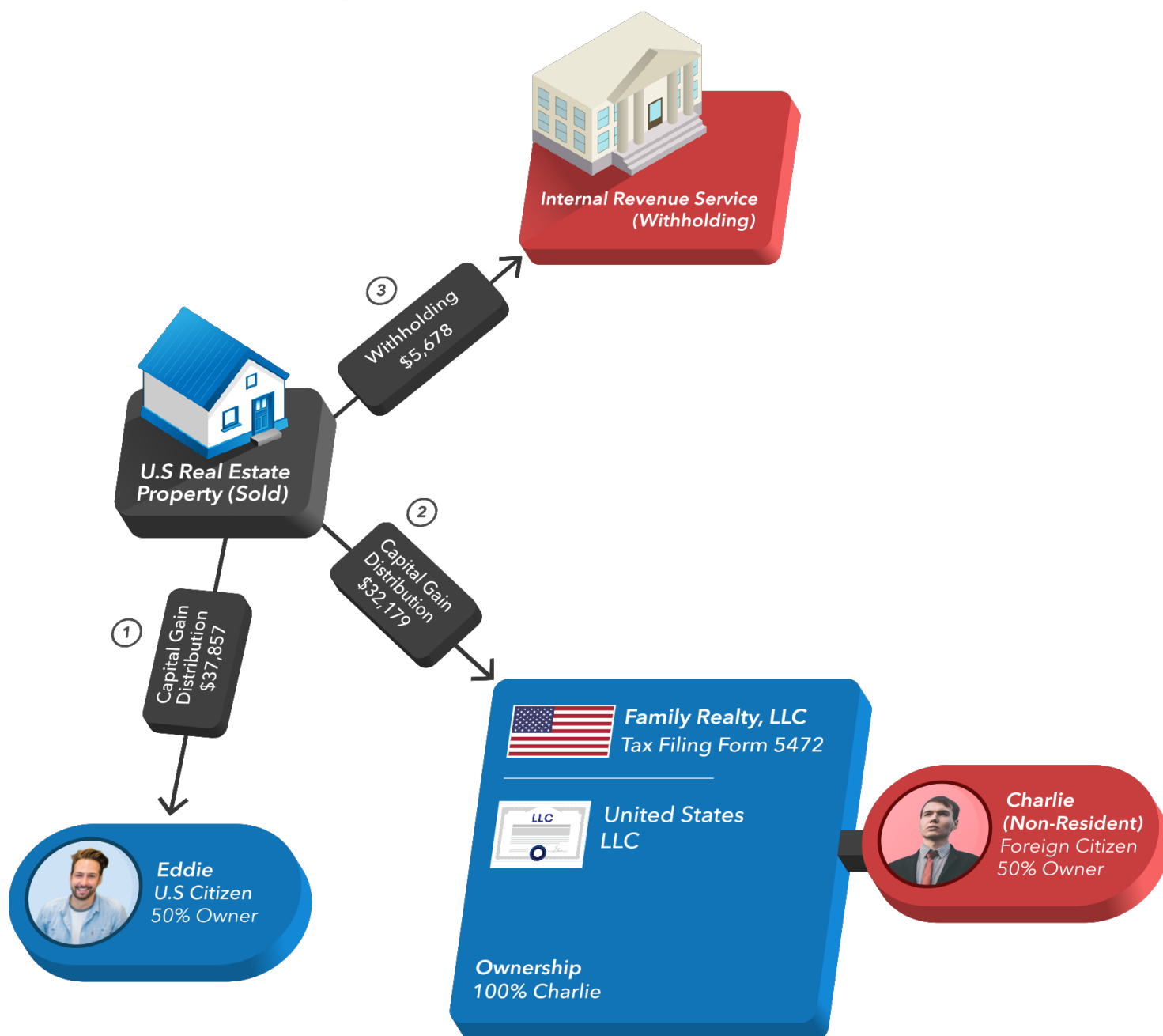


Co-Ownership Real Estate Sale (FIRPTA Withholding)

Tax Structures of United States Foreign-Owned LLCs - Structure #6

Structure Summary

Upon the sale of a real estate property partially owned by a Non-Resident Alien, an income tax that is imposed on foreign sellers by the Foreign Investment In Real Estate Property Act (FIRPTA) is withheld and paid to the IRS.



Co-Ownership FIRPTA Withholding

Structure Background

A United States Real Estate Property is owned equally as 50% owners between Eddie (a U.S. citizen) and a Limited Liability Company, Family Realty, LLC, owned wholly by his brother, Charlie (a Non-Resident Alien). The LLC is disregarded for Federal Tax purposes, and all tax paid is reported by Charlie personally.

The home is sold and subject to Capital Gains tax, and in the case of Charlie, subject to the Foreign Investment in Real Property Tax Act (FIRPTA) withholding under Internal Revenue Code §1445. The withholding requires a 15% withholding based on the gross sale price; alternatively, a holding certification can be requested for a reduced withholding amount.

Prior to the sale, documentation is submitted to escrow with supporting documents of the expected capital gain attributable to the sale along with [Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests](#) for a reduced rate of withholding.

Monetary Transactions & Accounting

1. Upon the sale, the U.S. Real Estate Property results in a Capital Gain of \$75,715 (Sale Price \$360,000 - Basis in Building \$196,806 - Land Basis \$48,195 - Improvements \$35,000 + Recaptured Depreciation \$13,716 - \$18,000 Selling Expenses). A Capital Gain distribution of \$37,857 is paid to Eddie with no withholding.
2. A Capital Gain distribution is paid to Family Realty, LLC of \$32,179 (less the FIRPTA withholding), with the payment being made to the IRS.
3. A withholding of \$5,678 is sent to the IRS based on the estimated tax liability of Charlie.

U.S. Tax Filing Compliance

4. **Form 1040 (Eddie).** Based on his Capital Gain, taxed at 15%, the tax due resulting from the sale is \$5,678.
5. **Form 1040NR (Charlie).** Based on his Capital Gain, taxed at 15%, the tax due resulting from the sale is \$5,678; however, as there was already withholding paid to the IRS, the tax due is \$0.

Foreign-Owned LLC Disclosure Requirement. Although the LLC may not necessarily be reported on Charlie's Non-Resident Personal tax return, there is a requirement to file [Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business](#), to disclose foreign ownership of United States LLCs and also certain reportable transactions per Internal Revenue Code §6038.



Co-Ownership FIRPTA Withholding

Summarized Tax Returns and Financial Statements

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Real Estate Property Gain

Sale Price	\$360,000
Less Basis (Building)	- \$196,806
Less Basis (Land)	- \$48,195
Improvements	- \$35,000
Recaptured Depreciation	+ \$13,716
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Gain on Sale	\$93,715
Selling Expenses	\$18,000
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Total Capital Gain	\$75,715

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Form 1040

Eddie

Capital Gain	\$37,857
Capital Gain Tax Rate	(15%)
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Tax Due	\$5,678

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Form 1040NR

Charlie

Capital Gain	\$37,857
Capital Gain Tax Rate	(15%)
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Tax	\$5,678
Withholding	- \$5,678
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Tax Due	\$0

Resulting Tax Implications

As a result of this structure, Charlie's U.S. tax liability is \$5,678, which is prepaid via a withholding rate.