

ID: CCA-12041200-15

[Third Party Communication:

UILC: 166.00-00

Date of Communication: Month DD, YYYY]

Number: **201602005**

Release Date: 1/8/2016

From: [REDACTED]
Sent: Friday, 12/4/15 12:00pm
To: [REDACTED]
Cc:
Bcc: [REDACTED]
Subject: Re:

Hi

Assuming, but not concluding, that the taxpayer is an investor, that is, the mortgage is not described in § 1221(a)(1) through § 1221(a)(8), then the note evidencing the mezzanine loan would be a capital asset under § 1221. The cancellation of the note upon the surrender of the property by a deed in lieu of foreclosure would satisfy the “sale or exchange” requirement of § 1222. See Allan v. Commissioner, 856 F.2d 1169, 1172 (8th Cir. 1988). Gain or loss on a deed in lieu of foreclosure is determined under §1001. Thus, the excess of the amount realized, \$ (the fair market value of the property), over the taxpayer’s basis in the note, \$, would result in a capital gain of \$. We note that §1.166-6(b) does not apply to a deed in lieu of foreclosure. See Rev. Rul. 61-35, 1961-1 C.B. 48.

We suggest that in the Form 886-A, you describe the process of a deed in lieu of foreclosure (as compared to a foreclosure sale). Specifically, set forth the facts supporting a deed in lieu of foreclosure characterization of the underlying transaction to make clear, in the event the case goes to appeals, that there is no bid price for purposes of § 1.166-6(b).

, also note that your computation of gain is \$ whereas I came up with a figure of \$. Please contact me if you have any questions or concerns.