In reply refer to: 0248352853
June 19, 2008 LTR 4168C E0
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BIRMINGHAM GROUP HEALTH SERVICES
INC
PO BOX 658
ANSONIA CT 06401

Employer Identification Number: 22-2598799
Person to Contact: Mr. Schatz
Toll Free Telephone Number: 1-877-829-5500

Dear Taxpayer:

This is in response to your request of June 10, 2008, regarding your tax-exempt status.

Our records indicate that a determination letter was issued in September 1985, that recognized you as exempt from Federal income tax, and discloses that you are currently exempt under section 501(c)(3) of the Internal Revenue Code.

Our records also indicate you are not a private foundation within the meaning of section 509(a) of the Code because you are described in section 509(a)(3).

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely yours,

Michele M. Sullivan, Oper. Mgr.
Accounts Management Operations I
Dear Taxpayer:

This is in reference to the request for reclassification of your non-private foundation status filed on your behalf on April 3, 1987.

You were recognized as exempt under section 501(c)(3) and classified as a 509(a)(2) organization by a ruling letter issued August 27, 1985. Subsequently, on September 10, 1985, we issued a ruling to you regarding the reorganization of Valley Mental Health Center, Inc. into a multi-corporate structure with The Birmingham Group, Inc. as the new parent. Under the reorganization, The Birmingham Group, Inc. is the sole member of three first tier subsidiary organizations, Valley Mental Health Center, Inc., The Birmingham Foundation, Inc., and Healthways, Inc., all of which are recognized as exempt under section 501(c)(3) and classified as non-private foundations described in section 509(a)(1) and 509(a)(2) respectively.

Your articles of incorporation provide that your principal purpose is to benefit, perform the functions of, carry out the purposes of and uphold, promote, and further the welfare, programs and activities of Valley Mental Health Center, Inc.

The following amendment has been made to the by-laws of each exempt subsidiary:

The Member shall elect Directors in such a manner that at all times the Board of Directors shall include at least a simple majority of the individuals then serving as Directors of the Member.

Section 509(a) of the Internal Revenue Code provides that the term "private foundation" means an organization described in section 501(c)(3) other than certain organizations described in section 509(a)(1), (2), (3), or (4).

Section 509(a)(3) excludes from the definition of a private foundation an organization which:
The Birmingham Group, Inc.

(A) is organized and at all times thereafter is operated exclusively for the benefit of, to perform the functions of, or to carry out the purpose of one or more specified organizations described in paragraph (1) or (2).

(B) is operated, supervised, or controlled by or in connection with one or more organizations described in paragraph (1) or (2), and

(C) is not controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more organizations described in paragraph (1) or (2).

Section 1.509(a)-4(b)(1) of the Income Tax Regulations states that if an organization fails to meet either the organizational or the operational test, it cannot qualify as a supporting organization.

Section 1.509(a)-4(d) of the regulations provides that in order to meet the organizational test under section 509(a)(3), the articles of the supporting organization must designate the supported organizations by name unless the supporting organization is "operated, supervised, or controlled by" or "supervised in connection with" one or more publicly supported organizations.

Section 1.509(a)-4(e) sets forth the operational test of section 509(a)(3)(A). There are two parts to this test, the permissible beneficiaries requirement and the permissible activities requirement. Under the permissible beneficiaries requirement of section 1.509(a)-4(e)(1) the regulation provides that a supporting organization will be regarded as "operated exclusively" to support one or more specified publicly supported organizations only if it engages solely in activities which support or benefit the specified publicly supported organization. The regulation also states that an organization will not be regarded as operated exclusively to support or benefit one or more specified publicly supported organizations if any part of its activities is in furtherance of a purpose other than supporting or benefiting one or more specified publicly supported organizations. Under the permissible activities requirement of section 1.509(a)-4(e)(2) a supporting organization is not required to pay over its income to the publicly supported organizations in order to meet the operational test. It may satisfy the test by using its income to carry on an independent activity or program which supports or benefits the specified publicly supported organizations. All such support must be limited to the permissible beneficiaries in accordance with section 1.509(a)-4(e)(1).

Section 1.509(a)-4(f)(2) states that section 509(a)(3)(B) sets forth three different types of relationships, one of which must be met in order to meet the requirements of section 509(a)(3). Thus, a supporting organization may be:
The Birmingham Group, Inc.

(i) operated, supervised, or controlled by,

(ii) supervised or controlled in connection with, or

(iii) operated in connection with, one or more publicly supported organizations.

Under section 1.509(a)-4(h), in order for a supporting organization to be "supervised or controlled in connection with" one or more publicly supported organizations, there must be common supervision or control by the persons supervising or controlling both the supporting organization and the publicly supported organizations to ensure that the supporting organization will be responsive to the needs and requirements of the publicly supported organizations. Thus, in order to meet such requirements, the control or management of the supporting organization must be "vested in the same persons that control or manage the publicly supported organizations." (Emphasis supplied.) Section 1.509(a)-4(h)(1). Section 1.509(a)-4(f)(4) "General description of relationships" provides:

In the case of supporting organizations which are "supervised or controlled in connection with" one or more publicly supported organizations, the distinguishing feature is the presence of common supervision or control among the governing bodies of all organizations involved, such as the presence of common directors, as described in paragraph (h) of this section. (Emphasis supplied.)

Based on the information submitted you have demonstrated that you are organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of your subsidiary public charities, Valley Mental Health Center, Inc., The Birmingham Foundation, Inc. and Healthways, Inc. In addition you have demonstrated that you are "supervised or controlled in connection with" the publicly supported organizations. Accordingly, we conclude that you are a non-private foundation described in Section 509(a)(3) of the Code.

This letter modifies our ruling letter of August 27, 1985 to the extent that it is inconsistent with that ruling.

We are notifying your key District Director of this action.

Sincerely yours,

Milton Cerny
Chief, Exempt Organizations
Rulings Branch