

JOINT LETTER ADDRESSING TAX BILL PROVISION AFFECTING CHARITIES

February 27, 2006

The Honorable William M. Thomas
Chairman, Ways and Means Committee
Longworth House Office Building, Room 1102
The United States House of Representatives
Washington, DC 20515

The Honorable Charles E. Grassley
Chairman, Finance Committee
Dirksen Building, Room 219
The United States Senate
Washington, DC 20510

Dear Chairman Thomas and Chairman Grassley:

As representatives and allies of many of the nation's charities, we would like to call your attention to a provision which we are concerned will place a very onerous burden on a key part of the nation's not-for-profit sector and hamper its ability to fulfill important charitable functions. **Section 206(c)** of the Senate-passed version of **H.R. 4297** would require charitable organizations (but not other types of exempt organizations) to hire an independent audit firm or outside tax counsel to certify the accuracy and completeness of their federal tax returns, including the Form 990-T. While it would raise little tax revenue (less than \$50 million over 10 years), the certification provision would impose major new compliance burdens and costs on charitable organizations. The provision has an extremely broad reach, and would apply to all **charitable** organizations with either gross revenues or gross assets of \$10 million or more in taxable years when such organizations are "subject to" the unrelated business income tax ("UBIT")—even if the amounts of UBIT are immaterial.

Charitable organizations are strongly opposed to this proposal for the following reasons:

- **Excessive and duplicative compliance costs and diversion of charitable dollars away from mission.** Most large charitable organizations already incur substantial costs in retaining outside audit firms and tax counsel to properly categorize their sources of income for both financial statement and tax reporting purposes. However, under section 206(c), such organizations will have to hire an "independent" auditor or tax counsel to conduct an additional **annual** review of their income and expenses, expense allocations and other items—and then to "certify" the tax return each year. This promises to be an extremely expensive undertaking for the affected charities (and a windfall for the accounting and law firms). Liability concerns and unclear tax laws will drive such firms to charge a premium for the requisite annual certifications, thus diverting charitable dollars away from programs that address important community needs. *The compliance costs associated with this proposal will divert significant resources and charitable assets away from the communities that need them the most.*

- **Creation of an un-level playing field.** Even though the UBIT rules are applicable to all types of exempt organizations (including social welfare organizations (501(c)(4)s), trade associations (501(c)(6)s), labor unions (501(c)(5)s), fraternal organizations, and several other classifications), only charitable organizations (501(c)(3)s) would be required to hire outside audit firms under section 206(c) to certify their compliance with the UBIT rules.
- **Other Policy concerns.** Charities are concerned about the proposed shift of responsibility for tax return compliance away from the organization's own officers and toward outside contractors. There is really no precedent for taking this kind of approach to tax return preparation. Moreover, any requirement that shifts responsibility for compliance to outside contractors would be a step away from recent progress made in corporate governance law toward holding senior management and boards of directors accountable.

In closing, we would like to emphasize that while we share your concerns about UBIT compliance, this proposal is not an appropriate or cost effective way to resolve the problems you may have identified. We look forward to working with you and your respective staffs to find alternative ways to address these concerns.

Sincerely,

Alliance of Community Health Plans

American Association of Museums

American Hospital Association

The Catholic Health Association of the United States

Premier

VHA Inc.

YMCA of the USA

cc. The Honorable Max Baucus
The Honorable Charles Rangel
The Honorable Jon Kyl
The Honorable Jim McCrery
The Honorable Dave Camp
The Honorable Fortney ("Pete") Stark
The Honorable Rick Santorum