American Council on Education
Office of the President

March 2, 2006

Dear Conferees:

I write to you on behalf of the American Council on Education (ACE), and the undersigned organizations, to express our strong support and concerns for several provisions included in H.R. 4297, the Tax Relief Act of 2005, as passed by the Senate on February 2, 2006. We appreciate your consideration of our views on provisions that are likely to have a substantial impact on our higher education institutions and our students.

We wholeheartedly endorse the Individual Retirement Account (IRA) rollover provision allowing older Americans to make contributions from their retirement accounts without incurring adverse tax consequences. The IRA rollover is enormously important to colleges and universities across the country, and has been a top tax priority of the higher education community over the years.

Additionally, we support the extension of the above-the-line deduction for qualified tuition and related expenses. This deduction expired on December 31, 2005. This provision is of great importance to middle class taxpayers financing a college education. A four-year extension of this provision would offer some stability to these taxpayers in planning for a college education.

We ask that the conference committee accept the Senate's language and include both of these provisions in the final bill.

There are some provisions in the Senate bill, however, that are likely to adversely affect charitable giving to colleges and universities or are otherwise troublesome changes to our tax laws. We would ask conferees to drop or revise these provisions in the final conference agreement.

Floor on Charitable Deduction for Itemizers

Section 301 of the Senate bill would modify current law to allow non-itemizers to deduct cash charitable contributions in excess of $210 for single taxpayers and in excess of $420 for taxpayers filing a joint return. It would restrict deductions by itemizers to contributions in excess of the amounts applicable to non-itemizers. The deduction for non-itemizers is intended to provide an incentive for charitable giving and it is reasonable to impose a floor because the standard deduction already assumes some amount of charitable contribution. Imposing a floor on the charitable deduction for itemizers, however, constitutes an annual tax increase on itemizers amounting to several billion dollars. This proposal would raise taxes on millions of Americans simply because they give generously to charity. In any given year, approximately 38 million income tax returns are filed claiming a deduction for charitable gifts. While the individual amounts that would be disallowed seem small ($210 or $420 per tax return), for these 38 million households, the floor would cumulatively disallow charitable deductions of up to $12 billion.

It is our understanding that the floor for itemizers is intended to offset the cost of allowing a charitable deduction for non-itemizers. It is, however, uncertain whether contributions by non-itemizers will increase more than contributions by itemizers will decrease. In 2003, although itemizers constituted

One Dupont Circle NW, Suite 800, Washington, DC 20036-1193
Telephone: (202) 939-9310 • Fax: (202) 659-2212

only one-third of all taxpayers, they contributed more than 80 percent of the total amount given to charity ($150 billion out of total of $188 billion).[1] For this reason, we believe there is a real risk that total charitable contributions will decrease if the floor for itemizers becomes law. We support the deduction for non-itemizers but, if the "price" of allowing a charitable deduction for non-itemizers is a floor on the deduction for itemizers, we feel that it would be better to leave current law as is.

Public Disclosure of 990-T, Exempt Organization Unrelated Business Income Tax (UBIT) Return

We oppose Section 306(b) of the Senate bill requiring exempt organizations to make their Form 990-Ts available to the public. Currently, the public has access to information about exempt organizations' UBIT. The Form 990 includes a description of an exempt organization's unrelated business activities and the amount of revenue derived from such activities as well as a description of activities that are not subject to UBIT because they fall within one of the statutory exclusions. The proposal to require public disclosure of Forms 990-T would impose an obligation on exempt organizations that is not imposed on any other taxpayers. Contrary to the purpose of the UBIT of creating a level playing field, this provision would tilt the playing field in favor of for-profit companies. Because the public already has access to information about exempt organizations' unrelated business activities from the Form 990, we feel that no tax policy purpose would be served by requiring disclosure of Form 990-T.

Certification of UBIT Activities

Section 306(c) of the Senate bill would require that Section 501(c)(3) organizations with gross income and receipts or assets of over $10 million file their returns with a certification by an auditor or counsel. It is not clear exactly what is meant by a certification, but we are concerned that this provision would add significantly to the cost of return preparation without having a significant impact on compliance. Many colleges and universities already retain outside professionals to prepare their returns. Requiring certification by auditors or counsel (a requirement not imposed on for-profit corporations) would greatly increase institutional costs without a corresponding public benefit. We would urge the conferees to delete this provision from the final bill.

Donor-Advised Funds

We recognize that some donors have abused donor-advised funds, but we also believe donor-advised funds provide an effective and efficient tool for charitable giving. They offer an attractive alternative for donors who do not want to incur the substantial expense and undertake the substantial work required to operate a private foundation, but want to set up a fund for charitable giving.

Colleges and universities are both sponsors of donor-advised funds and recipients of gifts from donor-advised funds sponsored by other organizations. While we applaud efforts to stop abuses in this area, the new and complex regulatory regime for donor-advised funds in the Senate bill contains a number of provisions that could adversely affect charitable giving in situations where there has been no history of abuse and there is no reason to expect abuses will develop. For example:

- Section 331 of the Senate bill defines a donor-advised fund as any fund or account separately identified by reference to contributions of one or more donors where the donor or a person designated by the donor has advisory privileges with respect to its distribution or investment. The bill provides that Treasury may promulgate a regulatory exception for a fund that will benefit a single identified organization or a single identified charitable purpose. Such a regulation, if

[1] **Giving USA 2005**

promulgated, would exempt many donor-advised funds for which a college or university is the sponsoring organization. However, Treasury is not required to promulgate regulations and may choose not to do so. Unless and until regulations are finalized, colleges and universities would be required to comply with burdensome rules that are intended to stop abuses even though college and university sponsored funds have not been the source of abuse in the past and are not likely to be in the future.

- We ask that the conferees mandate that Treasury exercise its regulatory authority to exempt funds formed for the benefit of a single beneficiary. Further, we suggest that the conferees make it clear in the legislative history that donor-advised funds sponsored by colleges and universities that benefit the sponsor are intended to be excluded from the definition of donor-advised fund, retroactive to the effective date of the legislation.

- Colleges and universities have historically been the recipients of many gifts where the donor restricts the use of the gift and retains some advisory privileges as to the use or investment of the funds. Although these gifts are not typically considered donor-advised funds, they would be included in the broad definition of Section 331 of the Senate bill. If these rules are enacted into law without an exception for colleges and university sponsored funds, there should be an exception for gifts made prior to the effective date of the new rules. It would be extremely burdensome to require donors and colleges and universities to review all restricted gifts and revise the terms of the gifts to comply with a new law.

- The Senate bill excludes funds that provide scholarships and other grants for travel, study or similar purposes from the definition of donor advised fund if two conditions are met. We strongly suggest that the requirement that the donor's advisory powers be limited to participation on a committee that he or she does not control is sufficient to prevent abuse, particularly if a college or university is the sponsor. Requiring that a sponsor also obtain IRS approval for every single fund that awards scholarships will impose an unnecessary and expensive burden not only on colleges and universities but also on the IRS. This burden is neither necessary nor justifiable if the donor's advisory privileges are limited and will inevitably result in a reduction of charitable gifts for scholarships. If the conferees are convinced that regulating the grant making process is necessary, having the IRS develop procedures would allow for more flexibility.

- We fully support the Senate's effort to eliminate abusive uses of donor-advised funds. We remain concerned, however, that the proposed penalties could be overly harsh in practice and, as a result, discourage legitimate uses of donor-advised funds. This would be unfortunate because donor advised funds, like the community foundations on which they are modeled, have proven to be an attractive and efficient vehicle for charitable giving that has benefited many colleges and universities.

- We are concerned that the prohibition on distributions to supporting organizations is overly broad. As described below, many colleges and universities create supporting organizations for a number of reasons. We recognize that there may be some situations where a distribution from a donor-advised fund to a supporting organization is intended to delay the distribution of funds for charitable use. That is not the case, however, when distributions are made to supporting organizations of colleges and universities. We would urge the conferees to carve out an exception from this rule for all Type I, Type II and Type III supporting organizations that support colleges and universities.

Supporting Organizations

In general, we support provisions in the Senate bill intended to prohibit abuse of Type III supporting organizations. There are, however, some uses of Type III organizations that do not give rise to abuse. One of these is the use of Type III organizations by public universities and land-grant colleges to hold an endowment for the university. The Type III organization is used to separate the funds raised by private donation from the public budget process to which the university is otherwise subject. Without such a mechanism, private donors would not be willing to make donations for the benefit of public universities. We ask that the conferees provide an exception from the provisions applicable to Type III for supporting organizations that are used to raise private funds and hold an endowment for public universities.

We have questions as to why provisions of the Senate bill apply to Type I and Type II supporting organizations as well as Type III organizations. Colleges and universities use Type I and Type II supporting organizations for a wide variety of purposes. For example, university presses and university technology transfer activities are often operated through supporting organizations.

The application of the provisions of the Senate bill in these situations would lead to results that serve no apparent purpose. For example, under Section 345 of the Senate bill, private foundations are prohibited from making contributions to supporting organizations. It is not apparent why a private foundation should not be able to make a contribution to a supporting organization controlled by a college or university. Section 341(b) of the Senate bill would prohibit supporting organizations from making grants to foreign entities. Again, it is not apparent why a gift from a supporting organization controlled by a university to a foreign entity should be prohibited. The difference between a gift to or from a university and a gift to or from a Type I or Type II supporting organization controlled by a college or university is a difference in form only that should not result in disparate tax treatment.

We appreciate your consideration of our views on these provisions that will have an impact on our institutions and our students. If you have any questions regarding this matter, please feel free to call Sheldon Steinbach or Laura Eugster Doyle at (202) 939-9355.

Sincerely,

David Ward
President

DW/cms

On behalf of:

American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
National Association of Colleges and University Business Officers
National Association of State Universities and Land-Grant Colleges