High Net Worth Family Tax Report

December 2024

Vol. 17 No. 2

2024 Year-End Planning—Last-Minute Checklist 2
The Life Cycle of Art Ownership 4
'We're Listening'—IRS Stops Auto-Assessment of Penalties on Certain Late Informational Filings for Foreign Gifts and Bequests 6
A Look Inside: The Expansion of Loeb & Loeb's Nonprofit and Tax-Exempt Organizations Practice 7

Welcome back to Loeb & Loeb's High Net Worth Family Tax Report, bringing you in-depth articles highlighting important topics and providing practical insights for high net worth individuals, with a focus on trusts and estates, tax, family offices, and tax-exempt organizations.

In this issue:

As a new year approaches, associate Anna Glorioso and senior counsel Jennifer M. Smith provide a checklist of year-end action items and a summary of 2025 inflation adjustments, which individuals may want to review as part of their tax planning for the remainder of this year and into the next.

Partner Diana Wierbicki, chair of Loeb's Art & Cultural Property group, and partner Amanda A. Rottermund explore essential transactional and tax considerations for art investors in each phase of their art ownership.

Associate Erica Stern and partner Matthew McKim discuss the beneficial effects of the IRS decision to stop the automatic assessment of penalties on U.S. taxpayers who make late filings of informational returns reporting foreign gifts and bequests.

In this latest Q&A in our "A Look Inside" series, partner Diara Holmes, co-chair of Loeb's Nonprofits and Tax-Exempt Organizations practice, discusses the significant growth of the team and explains how Loeb's strategic investment in this practice builds on a strong base of collaboration at the firm to provide the group's nonprofit clients with the full spectrum of legal support around transactions, compliance and litigation. You can catch up on our "A Look Inside" series on Loeb's Private Client group, with our Q&A featuring Gabrielle Vidal, chair of Loeb's Guardianships practice and co-chair of the Trust & Estate Litigation practice, and our Q&A featuring Diana Wierbicki, chair of our newly arrived Art & Cultural Property group.

Attorney Advertising

2024 Year-End Planning—Last-Minute Checklist

As a new year approaches, individuals should review the following checklist of action items before the start of 2025.

Corporate Transparency Act (CTA)-Status

The Corporate Transparency Act (CTA) requires the filing of reports that disclose the beneficial owners of most corporations, LLCs, limited partnerships and similar entities to the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN). The filing deadlines were set as (i) Jan. 1, 2025, for entities in existence before Jan. 1, 2024, (ii) within 90 days of creation for entities created in 2024 and (iii) within 30 days of creation for entities created in 2025 or after.

On Dec. 3, 2024, a U.S. district court entered a nationwide preliminary injunction in a ruling that held that (i) the CTA may not be enforced and (ii) entities do not need to comply with the CTA's reporting deadlines pending a further court order. On Dec. 6, FinCEN released a statement confirming that entities are neither currently required to file beneficial ownership reports nor subject to liability for failure to do so while the order remains in force, but that entities may continue to voluntarily submit the reports. FinCEN has appealed the injunction. Loeb & Loeb continues to monitor this developing situation. Please contact us with any questions regarding the CTA injunction and the status of your entities.

Gift and Estate Tax Planning

Use (or Forfeit) 2024 Annual Exclusion Gifts. In 2024, individuals can give up to $18,000 each to an unlimited number of recipients without reducing their federal lifetime gift tax exemptions, paying gift tax or filing a federal gift tax return. Married couples can give up to $36,000 per recipient by electing to "split" gifts on a gift tax return. Any unused 2024 annual exclusions will not carry over into 2025, so gifts of these amounts must be completed before year-end. Note that gifts made by check must be deposited by the recipient before year-end to qualify for the 2024 annual exclusion.

Review Your Estate Plan. Make a note on your 2025 to-do list to review your current estate plan (wills, revocable trusts, powers of attorney, etc.) with your Loeb attorney to ensure that it still aligns with your intentions and provides the optimum planning given your current financial and personal situation.

Consider Planning With Higher Gift and GST Tax Exemptions. Each U.S. individual has a federal gift and estate tax exemption, and an equivalent amount of generation-skipping transfer (GST) tax exemption, equal to $13.61 million in 2024, with an increase to $13.99 million in 2025. The current exemption amounts were enacted as part of the 2017 tax legislation, which doubled the exemptions from $5 million to $10 million per individual, as indexed for inflation. Legislative action will be required to extend these higher exemption amounts beyond 2025. Individuals with sufficient assets and a desire to make lifetime gifts may want to plan for the use of these higher gift and GST exemptions now, including making gifts to irrevocable dynasty trusts, which can defer estate taxes on the trust assets for multiple generations.

Charitable and Income Tax Planning

Manage Capital Gains Tax Liabilities. To mitigate potential capital gains taxes, individuals should review their portfolios for potential capital loss harvesting opportunities or their ability to accelerate capital gains to absorb any losses that were realized this year. Securities must be sold by Dec. 31, 2024, the last trading day of the year, to realize any capital gains or losses. Note that the asset holding period for tax purposes (i.e., long term or short term) is determined on the trade date (when you initiate the buy or sell order) rather than its settlement date. Also be mindful of the wash-sale rules, which disallow a tax loss on the sale of a security if a "substantially identical" security is repurchased within a 30-day window before or after the sale.

Bundle Charitable Gifts and Other Deductions. Individuals who make regular charitable gifts may want to optimize their potential charitable deductions by bundling donations into a year when they expect to have a high tax liability. Potential donors should factor in the charitable deduction limitations that may apply based on adjusted gross income (AGI) for the year, the type of charity (public or private) and the asset given (cash, appreciated stock, etc.). A five-year carry forward applies for charitable contributions that are not currently deductible due to AGI limitations. To take a deduction in 2024, donors also should ensure that the donation is deemed made no later than Dec. 31, 2024. Different dating rules apply depending on how the gifts are made and delivered (e.g., by check, credit card or cash wire, or through an in-kind donation, such as with securities).

Individuals also may wish to bunch itemized deductions (like medical costs and certain interest expenses) into this year, depending on their tax outlook for 2024 and 2025.

Retirement Planning

Take Required Minimum Distributions (RMDs). Individuals who must take required minimum distributions (RMDs) from certain retirement plans and individual retirement arrangements (IRAs) must take those distributions by Dec. 31, 2024, to avoid penalties. Note that final regulations under the SECURE Act 2.0, which apply as of Jan. 1, 2025, finalize new rules for determining an individual's "required beginning date" for RMDs based on the owner's applicable age:

DOB	RMID Age
Before July 1, 1949	70.5
July 1, 1949, to Dec. 31, 1950	72
Jan. 1, 1951, to Dec. 31, 1958	73
Jan. 1, 1960, or after	75

Further guidance will be issued to address the omission of owners born in 1959. Account holders should revisit their retirement planning early next year to confirm their RMD required beginning dates based on these new rules.

Consider Qualified Charitable Distributions (QCDs). In 2024, owners of inherited or traditional IRAs who are age 70½ or older can make tax-free direct transfers of up to $105,000 to qualifying public charities. These qualifying charitable distributions (QCDs) are not taxable income to the IRA owner but may count toward satisfaction of the owner's 2024 RMD, if any. QCDs for this year must be completed by Dec. 31, 2024, so IRA owners should contact their IRA trustees as soon as possible to confirm if desired QCDs can be made within this time frame.

Looking Ahead—2025 Inflation Adjustments for Personal Tax Planning

Gift, Estate and GST Taxes. The 2025 inflation adjustments for the gift, estate and GST tax exemptions provide an increase of $380,000 from 2024.

- **Unified Gift and Estate Tax Exemption:** For gifts made and estates of decedents dying in 2025, the exemption amount increases to $13.99 million (up from $13.61 million in 2024).
- **GST Tax Exemption:** The GST tax exemption also increases to $13.99 million in 2025 for generation-skipping transfers (up from $13.61 million in 2024).
- **Gift Tax Annual Exclusion:** The gift tax annual exclusion increases to $19,000 for gifts made in 2025 (up from $18,000 in 2024).
- **Annual Exclusion for Gifts to Non-U.S. Citizen Spouses:** For 2025 gifts made to non-U.S. citizen spouses, the annual exclusion increases to $190,000 (up from $185,000 in 2024).

Income Taxes

Income Tax Brackets. The 2025 tax brackets for individuals as well as trusts and estates also have been adjusted upward.

- **Married Joint Filers**: The top tax rate of 37% applies to taxable income over $751,600 in 2025 (up from $731,200 in 2024).
- **Single Filers:** The top tax rate of 37% applies to taxable income over $626,350 in 2025 (up from $609,350 in 2024).
- **Trusts and Estates:** Trusts and estates have a far more compressed tax bracket, and the top tax rate of 37% applies to taxable income over $15,650 in 2025 (up from $15,200 in 2024).

Capital Gains Thresholds. Below are the increased thresholds for application of the 15% capital gains tax rate. The 20% capital gains tax rate applies to adjusted net capital gains in excess of the 15% maximum amounts.

- **Married Joint Filers:** The 15% capital gains tax rate applies to adjusted capital gains of more than $96,700 and up to $600,050 (up from $94,050 and up to $583,750 in 2024).

- **Single Filers:** The 15% capital gains tax rate applies to adjusted capital gains of more than $48,350 and up to $533,400 (up from $47,025 and up to $518,900 in 2024).
- **Trusts and Estates:** The 15% capital gains tax rate applies to adjusted capital gains of more than $3,250 and up to $15,900 (up from $3,150 and up to $15,450 in 2024).

The above are subject to change if Congress enacts any modifications to current income or transfer tax laws. As always, you should contact your Loeb estate planning attorney for advice before taking any tax planning actions.

The Life Cycle of Art Ownership

New York City has just finished the November marquee fine art auctions. In many ways, these marquee sales are emblematic of the life cycle of art: Masterworks are brought to public sale—often by the estates of their prior owners—which draws in new collectors who then compete to purchase and build their own art legacies. Below we explore some of the essential transactional and tax considerations for each phase of the art ownership cycle.

Acquisition Phase

The art market is divided into two principal segments: the primary market and the secondary market. The primary market represents first-time art sales made by galleries or dealers directly on behalf of artists and artist studios. The secondary market represents the resale of art by galleries, dealers and auction houses on behalf of the subsequent owners of the art. For buyers in the acquisition phase, the sourcing of artworks for purchase may take them into both the primary and secondary markets, depending on their interests.

Transactional Considerations. Documentation in the art market is notoriously slim. Buyers who are new to the industry should be aware of this reality and appreciate the need to work with experienced counsel who understand the market "buy-side" terms to include in deal documents and know which due diligence items to obtain when vetting an artwork for acquisition. While these items vary, they generally include fact sheets stating provenance, exhibition history and literature, condition reports, high-resolution photographs and title and export/import documentation. Although there is no public title registry for art, there are private registries with information about stolen art that can be reviewed for purposes of title diligence, in addition to running Uniform Commercial Code searches against U.S.-based sellers and owners of art.

Tax Considerations. From a tax perspective, sales tax is the relevant consideration during the acquisition phase. Sales tax is a consumption tax typically collected by a seller and remitted to a state for the retail sales of goods and services within that state, although tax rates and regulatory and compliance frameworks differ from state to state. Because sales tax is determined based on the delivery destination, advance planning is key when mapping out an art transaction and identifying the potential sales tax liability.

The power of states to collect sales tax was strengthened by the 2018 Supreme Court ruling in *South Dakota v. Wayfair, Inc.* Before that decision, sellers with no physical presence in a state generally were not required to collect its sales tax. *Wayfair*, however, authorized states to use an economic presence test (versus a mere physical presence test) to require out-of-state sellers that are making high-volume or high-price deliveries of items into a state to collect and remit that state's sales tax on such deliveries. Since *Wayfair*, the landscape for art sales within the United States has significantly changed. Today, art galleries and auction houses across the country easily exceed the economic presence test thresholds and are required to collect and remit sales tax to the applicable authorities using specially designed multistate compliance accounting software. But even if a seller does not collect a sales tax, buyers should remember that states may charge use tax, which is a tax complementary to sales tax that is generally imposed by states on buyers in cases where sales tax has not been collected by the selling vendor and an applicable resale exception does not apply.

Collection Management Phase

Transactional Considerations. Logistics and location are critical components for art collectors and art investors alike. The various locations of residences, storage facilities and museums requesting art for public exhibition drive the logistical mapping. Chief among art logistics is ensuring that the condition of art is preserved and documented. Condition reports are the name of the game in art relocations because they provide baselines for the assessment of loss or damage and assist in pinpointing responsible parties. Therefore, relocation documentation and agreements must include provisions regarding the preparation and cross-checking of condition reports. An equally important element is insurance coverage. There are various forms of fine art insurance on the market, and the key points in reviewing policies are the exclusions, the terms related to partial damage and the terms related to permitted locations. Some policies provide coverage only for certain listed locations (and may exclude transit), whereas other policies are worldwide in nature and include any transit. Understanding the terms of a policy so that you can ensure your relocations of art are not in jeopardy is paramount when owning art.

Tax Considerations. As noted above, use tax is a tax on the buyer that complements sales tax. States may assess use tax not only at the time of sale of artwork to an in-state buyer but also upon an owner's relocation of previously purchased artwork into the state. Therefore, before relocating artwork, even if the relocation is years after its original purchase, the owner should check the use tax rules of the jurisdiction of the relocation to avoid any tax surprises. This issue is especially relevant when moving art that was previously stored or displayed abroad into the United States, because states generally do not provide credit against use tax for value-added tax (VAT) paid abroad.

Disposition Phase

Transactional Considerations. The disposition phase is when the documentation collected during the other phases of the art's life cycle becomes key. Preparations for dispositions will require owners and fiduciaries to provide supporting records with respect to the transfer of the art assets and the making of requested representations and warranties regarding the art holdings. In addition, when considering common disposition options—bequests, sales and gifts—art owners should ensure that their planning is well documented and holistically tied together with their overall estate and income tax plan. There are many nuances with art that are not at play with other assets classes due to the personal enjoyment element, the illiquid nature and the transportability of art.

Tax Considerations. Charitable gifts of art can be structured with sophisticated planning to achieve the art owner's personal and financial goals. For income tax purposes, the gift of art is generally subject to a 30% adjusted gross income (AGI) limitation with a five-year carry-forward period, so it is important for clients to run the numbers with their accounting and advisory teams to optimize the potential deductibility of their art gift in relation to their anticipated income.

When considering the sale of art, capital gains tax is typically a primary focus for owners. Art held for more than one year is treated as "collectibles" property in the hands of the owner, with the gain from its sale being taxed at a federal income tax rate of 28% (compared with a top rate of 20% on other long-term capital gains property) plus any applicable net investment tax and/or state income tax. This higher tax rate on collectibles must be factored into owners' art disposition strategy so that it does not come as an unwelcome surprise.

'We're Listening'—IRS Stops Auto-Assessment of Penalties on Certain Late Informational Filings for Foreign Gifts and Bequests

Consider the following common scenario: A U.S. taxpayer (let's call her Sylvia) has family in a foreign country and receives devastating news of a close relative's passing. She flies abroad for the funeral, helps the family go through personal belongings, breaks the news to friends and neighbors, and grieves. The fact that Sylvia will receive a large bequest from the deceased family member is far from her primary concern. But since she is unfamiliar with the tax treatment of foreign assets, she eventually consults with a tax professional, who advises Sylvia that she will not owe any income taxes on the bequest. Years later, a cousin (who also received an inheritance) tells Sylvia that she was supposed to inform the IRS about the foreign bequest even though no taxes were due. Although it's late, Sylvia submits a Form 3520, Part IV (Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts) to report the bequest and attaches a statement explaining the delayed filing. Before October of this year, the IRS would have immediately and automatically assessed a penalty on Sylvia's filing, potentially of up to 25% of the inheritance received, and started the collections process. Sylvia would not have had a chance to appeal the penalty before collections started. It also would not have mattered that no tax was due on the bequest or that Sylvia came forward of her own accord; the penalty would have been the same as if the IRS had discovered the delinquent filing.

If this seems unfair to you, you are not alone! For years, the National Taxpayer Advocate of the Taxpayer Advocate Service (TAS) and other tax practitioners have pushed to end the automatic assessment of penalties for those taxpayers who voluntarily submit late informational returns. In October 2024, the IRS explicitly acknowledged this advocacy and announced that it would stop the automatic assessment of penalties on certain late-filed Forms 3520 and 3520-A International Information Returns (IIRs). By year-end, the IRS will begin reviewing reasonable cause statements attached to IIRs before assessing a penalty. As a result, there is an incentive for those taxpayers who realize they have missed filing these IIRs to come forward independently.

IRS Commissioner Danny Werfel referred to this new approach as being more empathetic, pointing to the fact that the IRS is now taking into account the myriad reasons for delays in taxpayers' reporting of the receipt of foreign gifts or bequests. For one, taxpayers may not realize they have to submit these filings, particularly when no tax is due on the foreign gift or bequest (which is often the case). No matter the reason for a delayed filing, encouraging individuals to report their foreign gifts and bequests supports the overall goal of IIRs—to combat U.S. taxpayer tax avoidance and hiding of assets abroad.

Also, these automatic penalties were often assessed in error. The TAS reported that from 2018 to 2021, "the IRS abated … 67% of penalties assessed and 78% of the dollars assessed" with respect to Form 3520, Part IV. The new approach will lessen the burden on taxpayers and the IRS alike. It will give taxpayers time and incentive to submit the required IIRs, even if late, and will reduce the administrative burden on the IRS associated with collecting penalties and responding to taxpayers' appeals of automatically assessed penalties.

Overall, this new approach to penalty assessments for late-filed Forms 3520 or 3520-A is beneficial across the board. Ideally, the practice of automatically assessing late-filing penalties will be expanded to apply to other IIRs. Erin Collins, the National Taxpayer Advocate, is pushing for such an expansion. We hope the IRS is listening.

A Look Inside: The Expansion of Loeb & Loeb's Nonprofit and Tax-Exempt Organizations Practice

Diara M. Holmes, co-chair of Loeb & Loeb's Nonprofits and Tax-Exempt Organizations practice, discusses the significant growth of the team. She also explains how Loeb's strategic investment in this practice builds on a strong base of collaboration at the firm to provide the group's nonprofit clients with the full spectrum of legal support around transactions, compliance and litigation.

Tell us about the growth of Loeb's Nonprofits and Tax-Exempt Organizations practice.

Over the past 18 months, our dedicated EO team has doubled in size, with 10 lawyers now practicing full time in this area. This growth reflects a concerted effort to reinforce our strengths in nonprofit tax, transactional, governance and investigations and to expand our capabilities to meet our nonprofit clients' emerging needs. During this period, we have welcomed three new partners—Kim Eney, Yael Fuchs and Meghan Biss—and two associates—Ana Maganto Ramirez and Vivienne LaBorde—to the firm. In early 2024, Talia Metson was elevated to partner, and Kensi Wolgamott was promoted to senior counsel. It is an honor to lead this talented group along with my co-chairs, Marc Owens and Jason Lilien, who bring their perspectives and the gravitas of senior government service to our work.

I am proud that we have assembled a diverse and collaborative "dream team" of thought leaders, former federal and state regulators, and trusted advisors to serve the nonprofit sector. Our bench is deep in essential areas of exempt organizations, including tax planning and controversies (IRS audits and appeals), nonprofit mergers and other transactions, grant-making and program-related investments, corporate governance, investigations, and litigation.

To be clear, supporting individual, corporate and family philanthropy is not new for Loeb & Loeb. The firm represented a wide variety of nonprofit clients and donors before Marc Owens and I joined the firm in 2015 and formalized what we now call the EO group. For example, in our LA office, Leah Bishop and Paul Frimmer and others have long advised some of the nation's most prominent philanthropists, family foundations and cultural institutions. Colleagues in our Entertainment and Sports practices have advised athletes and artists on their off-the-field and off-screen legacy planning through philanthropy. I could go on with examples from our Corporate, Advertising and Media, and other transactional practices, where nonprofit associations, corporate sponsors and funder clients abound. What excites me is the degree to which we are now intentionally, strategically integrating with these other practices.

What distinguishes Loeb's Nonprofits and Tax-Exempt Organizations practice?

Beyond our size, Loeb's practice is distinctive in several respects.

Perhaps most notably, our clients benefit from the insight and experience of four former government officials. Marc Owens spent 25 years at the IRS, including 10 years as the director of the IRS' Exempt Organizations Division. Meghan Biss spent a decade at the IRS, including serving as a senior technical advisor to the Exempt Organizations Division Director. Jason Lilien served as the Bureau Chief of the New York State Attorney General's Charities Bureau, and Yael Fuchs served as the co-chief of the Bureau's Enforcement Section. This breadth of regulatory experience is so valuable to a nonprofit organization or to a donor or board member who is facing an IRS audit, a state attorney general investigation, or an internal issue that could lead to attention from regulators, donors or the press. Because of this collective insight, clients often engage members of our team to perform mock audits or compliance reviews to ensure that they can withstand legal scrutiny. Clients also turn to us to conduct internal investigations and for crisis management.

Another distinctive feature is the way our group complements and coordinates with the firm's other leading practices—including Private Client, Entertainment, Employment, Sports, Litigation, and Advertising and Media. As a result, we are able to support not only the institutions but also the founders, donors, family offices, C-suite executives, governing boards and corporate sponsors. This collaborative culture and the ability to provide a full range of legal services are what attracted me to Loeb & Loeb 10 years ago. If a public charity client with a global brand needs a licensing agreement, I can call a colleague in our AMT group to assist. We work with colleagues in our Corporate department routinely on mergers, acquisitions and joint ventures involving nonprofit organizations. We partner with colleagues in our Labor and Employment practice to advise nonprofit boards through the process of approving reasonable compensation for senior executives and to help them navigate sensitive investigations.

Our lawyers are frequent speakers and contributors to nonprofit conferences throughout the year. As an example, Kim Eney and Meghan Biss serve as vice chairs of the Exempt Organizations Committee of the ABA Tax Section. This continuous engagement with our peers in the nonprofit tax bar ensures that we are aware of legal developments, IRS and AG guidance, proposed legislation, and trends in structuring philanthropy.

For some of our nonprofit organization clients, we serve as outside general counsel. In this role, our clients view us—and rely on us—as partners in their mission. We're on the leadership team's speed-dial for day-to-day advice across a full range of legal compliance and operational issues, and we are the first ones they call in a crisis. They trust us to engage specialists in our network—such as valuation experts, crisis communications advisors, compensation consultants, or forensic accountants—as needed for investigations or complex cases.

What kinds of transactions does the team support?

I can't think of a transaction involving a nonprofit organization that we don't support. To put it simply, we advise our clients from setup to sunset on every imaginable kind of transaction involving nonprofit organizations, their funders and their affiliates, whether nonprofit or for-profit.

On the "startup" desk, we help clients establish new private foundations, public charities, social welfare organizations and trade associations—from incorporation to applications for tax-exempt status to launching with the appropriate governance infrastructure. We also represent both fiscal sponsors and fiscally sponsored projects.

For private foundations, we advise on complex grant agreements and on a variety of program-related investments. We support family offices more broadly by advising on the deployment of assets through multiple entities—including donor-advised funds, private foundations, LLCs and 501(c)(4) organizations—to achieve the family's philanthropy and advocacy goals, all with a view toward compliance with the federal tax rules.

For public charity clients, we often advise on corporate sponsorships, ensuring that an agreement does not confer substantial return benefits to the sponsor. We also provide support to public charities that are collaborating with for-profit retailers in cause marketing or commercial co-venture transactions. We help charities structure joint ventures, set up wholly owned for-profit subsidiaries, license their brands, invest in real estate and engage in venture capital.

Through our long-standing relationships with the Canadian charity bar and with the charity bar in the UK, we advise on cross-border transactions and other matters for charities and private foundations interested in a broader perspective of charity.

Recently, we've seen an uptick in strategic alliances and nonprofit mergers and acquisitions on our docket, driven in part by current economic challenges. Sometimes the motivation to combine nonprofit entities is cost savings or efficiency or to streamline operations. We also advise on dissolutions, which may happen for a number of reasons, including when a nonprofit's funding streams dry up or its sources of earned revenue have waned. In other cases, the charity has declared victory, having achieved its goals. In all of these cases, we enjoy advising nonprofit boards from the concept through execution. We prepare all of the necessary documents, agreements and state filings, in some cases working closely with colleagues in our corporate, IP and data privacy practices.

What non-transactional support do you provide?

We provide a full range of legal, compliance and strategic support to nonprofit organizations. If audit, state regulatory or litigation matters arise, we advise on resolving those actions. As I mentioned, four of our partners are former regulators—two from the IRS, and two from the New York Attorney General's Office. This gives our team authoritative insight into what the regulators care about and how to address investigations and audits as efficiently as possible. We have experience in crisis management for nonprofits so that if a crisis arises, we can help manage the investigation, public relations concerns, accounting issues and remediation.

Our Washington, D.C., office is also particularly poised to assist with those "inside the Beltway" issues—meetings with the Internal Revenue Service and Department of Treasury to discuss the potential impact of proposed regulations, areas where guidance would be particularly useful to clients as they conduct their day-to-day operations and private letter ruling requests. We also work closely with clients when there are congressional investigations or hearings, particularly on issues that are before the Senate Finance and House Ways and Means committees.

We also represent 501(c)(4) organizations, which are social welfare groups that conduct lobbying and advocacy work. During election cycles, we advise these groups and their donors on compliance issues that can arise with partisan political activities. We review their messaging to ensure compliance, helping them strike the right balance of social welfare versus political activity, and sustaining their bases' support after elections, regardless of outcome.

We also provide orientation for new nonprofit board members and training for boards, program teams and leadership teams on a variety of nonprofit compliance issues, such as grant-making, lobbying, unrelated business activities and corporate sponsorship. We've also developed a series of webinars for foundations with complex grant-making dockets to train their staff and grantees on compliance issues.

Finally, we work together with our litigation colleagues to represent tax-exempt organizations involved in disputes. For example, whether the nonprofit is subject to employment claims, bankruptcy clawbacks or other litigation, there are unique issues involved, requiring knowledge of the nonprofit sector. We also help large charities manage their litigation docket as a type of outside general counsel service.

What are some of the legal challenges that your clients seem most concerned about right now?

Clients, especially high net worth individuals and family foundations, always have questions about what state regulations may be on the horizon as well as about the ever-present risk of IRS audits. So, for example, the IRS has announced it's focusing on the transactions between and among high net worth donors and their charities to look for potential abuses. Similarly, congressional committees have publicized that they are interested in high net worth individuals and the various nonprofits and other organizations surrounding them as well as the political activities of nonprofits. In response, we're supporting our clients by conducting compliance checks and mock audits to help clients prepare for that kind of scrutiny should it come to pass.

In the wake of the U.S. Supreme Court's decisions last summer regarding affirmative action in college admissions and the Fearless Fund settlement, nonprofit organizations that focus on racial equity as part of their charitable and educational activities have been grappling with how to remain true to their social justice missions and values while complying with the law and avoiding costly litigation. In response, we are seeing some private foundations setting aside significant funding for technical assistance and training programs. In this way, funders are helping ensure that grantees and potential grantees have access to timely and tailored legal advice during this uncertain time. We have been pleased to present topical webinars and education sessions for groups of grantees as well as customized guidance for foundation boards, along with colleagues in our Litigation and Employment practice groups.

Our clients also seek our help with legal reviews of their public-facing materials, since any representation of a program that is coupled with a request for donations becomes a regulated communication. In this highly polarized environment, public-facing material can also subject an organization to attack and—in the worst case—litigation, and we work with clients to assess and mitigate risk.

Related Professionals

Cristine M. Sapers . . . . csapers@loeb.com
Jennifer M. Smith . . . . jsmith@loeb.com
Alyse N. Pelavin . . . . apelavin@loeb.com
Diana Wierbicki . . . . dwierbicki@loeb.com
Amanda A. Rottermund . . . . . . arottermund@loeb.com
Matthew McKim . . . . mmckim@loeb.com
Erica Brooke Stern . . . . estern@loeb.com
Anna Glorioso . . . . aglorioso@loeb.com
Diara M. Holmes . . . . dholmes@loeb.com
Gabrielle A. Vidal . . . . gvidal@loeb.com