

IOLTA: QUESTIONS & ANSWERS
FOR FINANCIAL INSTITUTIONS

Q. What is a lawyer's trust account?

A. Attorneys routinely receive client funds to be placed in trust for future use. If these funds are large in amount or to be held for a long period of time, the attorney customarily deposits these monies in an individual interest-bearing account for the benefit of the client. However, those deposits in attorney trust accounts that are small or short-term often make it impractical for the attorney or financial institution to establish separate interest-bearing accounts that would result in any interest accruing to individual clients. So, these funds from various clients are deposited together in one account. In the past, attorneys merely had the option of placing these small or short-term trust deposits in pooled, noninterest-bearing checking accounts.

Q. What is the Interest on Lawyers Trust Accounts (IOLTA) program?

A. This plan allows attorneys to invest the pooled, small or short-term deposits to generate money through the use of an interest-bearing account subject to negotiable orders of withdrawal. The interest from these accounts is channeled into a charitable foundation for distribution to law-related public interest programs.

Q. What does the program do?

A. The interest earned from this program is forwarded to the Center for Civic Values (formerly the New Mexico Bar Foundation) for collection and distribution. The New Mexico Supreme Court authorized the program through the Bar Foundation in 1984, and it specified that the funds are to be used for three purposes: to provide legal assistance to the poor, to promote legal education for the public, and to improve the administration of justice. In 1999, the rule was revised to reflect the name change from New Mexico Bar Foundation to Center for Civic Values (CCV).

Q. Who decides where IOLTA money goes?

A. A Grant Committee is appointed by the New Mexico Supreme Court, CCV, and the State Bar of New Mexico. There are five lawyers (judges and practicing attorneys) and two lay persons. They review all grant applications and make recommendations for funding to the CCV Board of Directors, which approves or amends them and sends them to the Supreme Court for final approval.

Q. Does the program operate successfully elsewhere?

A. Currently, IOLTA programs are operating in 50 states, the District of Columbia and

the U.S. Virgin Islands. In twenty-seven states, IOLTA participation is mandatory (all lawyers must participate); in 22 jurisdictions IOLTA programs are "opt-out" (all lawyers must participate unless they affirmatively choose not to); and, three jurisdictions have voluntary programs, including New Mexico, which converted from voluntary to opt out on April 1, 2002,

Q. Are there any legal barriers to financial institutions offering the IOLTA program?

A. There are no known legal barriers to banks, savings and loans, or credit unions offering the IOLTA program. The IRS, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board have specifically approved financial institution participation in the New Mexico IOLTA program.

Q. How does the financial institution benefit from participating in the IOLTA program?

A. The program provides an excellent opportunity for financial institutions to work with the legal profession in an endeavor that provides services for the benefit of the community. Participation can be described in promotional brochures or in annual reports to shareholders to let customers know your financial institution is a partner in raising funds to help assure access to our legal system for the poor and other law-related programs. IOLTA participation can and should be described in annual Community Reinvestment Act statements. Some financial institutions are aggressively marketing their IOLTA participation and using it as an opportunity to develop new customers. IOLTA participation has resulted in positive coverage by local and statewide media and legal periodicals.

Q. How can financial institutions help in the IOLTA program?

A. First, financial institutions must decide to participate in the IOLTA program. Second, financial institutions can waive minimum balance requirements for these accounts since the funds will be used only for public purposes. Some financial institutions participating in IOLTA do not deduct any fee from the interest earned on these accounts, operating them from their philanthropic department not their commercial side. The financial institutions that do assess a fee generally set nominal amounts, usually to pay only for any "hard" cost of administering the account.

Q. If the financial institution decides to charge, who pays and how?

A. Financial institutions participating in the IOLTA program may assess a reasonable charge for the costs of additional accounting procedures and remitting interest to CCV/IOLTA. These charges, if any, should be deducted from each remittance and should be itemized on the remittance report form. In no instance can the principle of an attorney's IOLTA account be used to pay service fees or other charges. Many

participating financial institutions waive all fees to IOLTA, thereby eliminating additional bookkeeping for the financial institution staff, and increasing the total amount of dollars available for charitable purposes.

Q. How often should interest be paid?

A. Interest, calculated on the average monthly balance in the account or as otherwise computed in accordance with your institution's standard accounting practice, should be remitted monthly to IOLTA by the financial institution.

Q. What reporting requirements are there?

A. Financial institutions are responsible for transmitting interest income information to the CCV. The information may be provided by one of two methods: you may submit a copy of the account's routine statement, or you may complete an interest remittance report. The interest remittance report form is provided at the time of enrollment. Either method should include *the name* and *the account number* of the participating lawyer or law firm for whom the remittance is sent, the rate of interest paid, the earnings period and the amount remitted.

Q. Is it necessary to prepare IRS Form 1099?

A. No. Since CCV is a 501(c)(3) charitable organization, you do not need to report interest income on IRS Form 1099. Section 6049 of the Internal Revenue Code specifically exempts 501(c)(3) corporations from income taxation and all income on IOLTA accounts is generated on the Center's TIN. In fact, a Form 1099 should not be prepared. If, however, it is more convenient for you to generate the form, please mail it to CCV at PO Box 2184, Albuquerque NM 87103-2184.

Q. How can a financial institution ensure that the interest is not included in the gross income of the attorney or client?

A. When IOLTA accounts are opened or converted, the tax identification number should be that of CCV: 85.6018573. The Internal Revenue Service matches the TINs with the payee, and since they do this by checking if the first four letters of the payee's name matches the TIN, your records should reflect the Center as payee for reporting purposes. This requirement does not carry over to the printed checks themselves, and new checks should not be issued. It is sufficient that financial institution records show CCV/IOLTA as payee.

Q. Is additional information available?

A. Yes. More information may be obtained by contacting:
Center for Civic Values IOLTA Program
PO Box 2184
Albuquerque, NM 87103-2184

764-9417, ext. 19 (in Albuquerque)
800-451-1941, ext. 19 (instate)
iolta@civicvalues.org
www.civicvalues.org/iolta.html