

## **WHAT IS THE INTEREST ON LAWYERS' TRUST ACCOUNTS (IOLTA) PROGRAM?**

Attorneys routinely receive funds to be held in trust for future use. If a client's funds are large enough or to be held long enough to generate interest for the client, net of bank charges and administrative fees, they should be placed in an interest-bearing account for the individual client's benefit. Client funds that are too small in amount or held for too short a period of time to earn interest for the client, net of bank charges and administrative fees, are commingled in a pooled checking account.

The Montana Justice Foundation IOLTA program, authorized by the Supreme Court of Montana in April of 1986, allows attorneys to convert their noninterest-bearing trust accounts to interest-bearing IOLTA accounts. The interest from these IOLTA accounts is remitted at least quarterly to the Montana Justice Foundation, a charitable, tax-exempt entity.

## **HOW DOES THE MONTANA JUSTICE FOUNDATION USE THE INTEREST?**

The interest generated by the IOLTA program is used by the Montana Justice Foundation to make grants in the following categories: (1) Support and encourage the availability of legal services to vulnerable and underserved populations; (2) Increase public understanding of the law and the legal system through education; (3) Promote the effective administration of justice; and (4) Increase public understanding of and access to alternative dispute resolution.

Since the first grants of IOLTA funds were awarded in 1986, the Montana Justice Foundation has awarded nearly \$3 million for charitable, law related purposes. The existence of IOLTA has allowed us to make progress in meeting the needs of the poor for civil legal aid through funding of pro bono projects and Legal Services. The foundation has also funded projects to improve the administration of justice and to provide law related education for the public.

## **HOW DOES IOLTA AFFECT TRUST ACCOUNT PRACTICES?**

IOLTA does not affect Trust Account practices. Lawyers should follow the same criteria they have always followed in deciding whether funds are of a sufficient amount or duration to justify placing them in individual accounts for the benefit of the client, or whether to place them in a pooled trust account.

## **WHAT ARE THE TAX CONSEQUENCES OF PARTICIPATION IN IOLTA?**

There are none to the attorney or the client. The Montana Justice Foundation, which receives the interest income, is tax-exempt. The Internal Revenue Service stated in

Revenue Ruling 81-209 that the interest earned on nominal and short-term client advances, which is paid over to a bar foundation pursuant to a court-established program, is not includable in the gross income of any client.

### **HOW DOES IOLTA AFFECT CLIENTS?**

IOLTA does not affect clients. Interest earned on IOLTA accounts is earned on funds that otherwise would not be invested in the client's behalf. Therefore, the client would not earn interest on these funds under any circumstances.

### **DOES PARTICIPATION IN IOLTA IMPOSE ADDITIONAL ADMINISTRATIVE DUTIES?**

No. Once the trust accounts are converted to an IOLTA account, the bank handles all the paperwork and the attorney continues to use the trust account as usual.

### **WHAT IF THE SERVICE CHARGES ON MY IOLTA ACCOUNT ARE MORE THAN THE INTEREST EARNED?**

Service charges in excess of interest earned should not be taken from interest earned on other IOLTA accounts or from the principal of the account. Your bank may waive excess fees, debit them from your operating account or you may deposit funds sufficient to cover excess fees into your trust account.

### **HAVE IOLTA PROGRAMS OPERATED SUCCESSFULLY IN OTHER PLACES?**

Yes. IOLTA programs have been established successfully in all 50 states. Florida established the first IOLTA program in the United States in 1981. IOLTA programs have also operated successfully in a number of Canadian and British jurisdictions for many years.

### **WHAT IS THE PROCESS TO PARTICIPATE IN THE MONTANA JUSTICE FOUNDATION IOLTA PROGRAM?**

The order of the Supreme Court of Montana establishing the IOLTA program provides that all attorneys are required to participate in an IOLTA program unless the lawyer/firm qualifies for exemption under section (d) of the rule.

Attorneys need to complete a conversion form available from their bank or the Montana Justice Foundation.

### **HOW CAN WE FIND OUT MORE ABOUT IOLTA?**

Contact Amy Sings In The Timber, Director of the Montana Justice Foundation.

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