

WHAT IS IOLTA?

IOLTA – Interest on Lawyers’ Trust Accounts – is a method of raising money for charitable purposes, primarily the provision of civil legal services to indigent persons. The establishment of IOLTA in the United States followed changes to the federal banking laws passed by Congress in 1980, which allowed some checking accounts to bear interest. IOLTA programs currently operate in all 50 states, the District of Columbia, and the U.S. Virgin Islands.

The Montana IOLTA program was authorized by the Supreme Court of Montana in April of 1986. The interest from IOLTA accounts is remitted at least quarterly to the Montana Justice Foundation, a charitable, tax-exempt entity.

HOW DOES THE PROGRAM WORK?

Lawyers often handle money that belongs to clients, such as settlement checks, fees advanced for services not yet performed, or money to pay various court fees. Sometimes the amount of money that an attorney handles for a single client is quite large. In such cases, lawyers deposit the funds into trust accounts, where the funds can earn interest for the client.

Often, however, the amount of money that a lawyer handles for a single client is quite small or held for only a short period of time, and cannot earn interest for the client in excess of the costs incurred to collect that interest. Traditionally, lawyers have placed these deposits into combined, or pooled, trust accounts that contained other nominal or short-term client funds.

Trust accounts typically are checking accounts (to allow easy access to the funds) and, prior to the early 1980s, pooled trust accounts earned no interest. Since the inception of IOLTA, however, attorneys who handle nominal or short-term client funds that cannot earn interest for the individual client, place these funds in a single, pooled, interest-bearing trust account. Banks, in turn, forward the interest earned on these accounts to the Montana Justice Foundation, which distributes the funds through a competitive grant process to qualified non-profit organizations dedicated to providing access to justice for low-income Montanans.

DO IOLTA PROGRAMS OPERATE SUCCESSFULLY IN OTHER PLACES?

Yes. IOLTA programs have established successfully in all 50 states, the District of Columbia, and the U.S. Virgin Islands. 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.

ARE THERE LEGAL BARRIERS TO FINANCIAL INSTITUTIONS OFFERING IOLTA ACCOUNTS?

No legal barriers exist; however, there may be practical issues to address when hosting IOLTA accounts. Most of the practical concerns involve data processing and are easily overcome through the use of templates and electronic reporting systems, including ACH remittance. The Foundation offers financial institutions assistance in complying with the rule.

WHICH FINANCIAL INSTITUTIONS CAN OFFER IOLTA ACCOUNTS?

Any eligible financial institution may host IOLTA accounts. To qualify as eligible under the rule the institution must be a federally-insured and state or federally regulated financial institution authorized by federal or state law to do business in Montana. Eligible financial institutions must also agree to notify the State Bar of Montana of any overdrafts on IOLTAs.

MAY A DIFFERENT INTEREST RATE BE PAID ON "IOLTA" ACCOUNTS THAN IS PAID ON OTHER INTEREST-BEARING ACCOUNTS?

Financial institutions that offer IOLTA accounts must pay the highest interest rate or dividend generally available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any.

HOW OFTEN MUST INTEREST BE PAID?

Interest must be remitted at least quarterly to the Montana Justice foundation. The interest should be calculated on an average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practice, less reasonable service fees, if any.

WHAT ARE THE REPORTING REQUIREMENTS?

Financial institutions must send a report at least quarterly to the Montana Justice Foundation. The report should include the following information: 1) the period for which the remittance is made, 2) the name of the lawyer or law firm from whose IOLTA account the remittance is being sent, 3) the IOLTA account number, 4) the rate of interest applied, 5) the gross interest or dividend earned during the period, 6) the account average daily balance, 7) the amount and description of any service charges or fees assessed during the period, and 8) the net amount of interest or dividend remitted for the period.

MAY ATTORNEYS STILL INVEST MONEY ON BEHALF OF CLIENTS IF THEY PARTICIPATE IN IOLTA?

Yes. Funds of a substantial amount or that are to be held for long periods of time should be invested in an interest-bearing medium for the individual client's benefit in an account established specifically for that client. Funds affected by IOLTA are funds pooled in a noninterest-bearing account by the attorney because they are small in amount or to be held for a short period of time, and would not generate enough interest to benefit the individual client, after bank charges and administrative fees.

WHAT ARE THE TAX CONSEQUENCES OF PARTICIPATION IN THE PROGRAM?

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 DO FINANCIAL INSTITUTIONS BENEFIT FROM PARTICIPATION?

Participating in IOLTA can be seen as a community service by banks and can result in favorable coverage by the news media. Financial institutions in some states use their IOLTA accounts as a way to attract new customers.

HOW CAN WE FIND OUT MORE ABOUT IOLTA?

Contact Niki Zupanic, Executive Director at:

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