

Vital Facts for Bankers About Setting up IOLTA Accounts

1. IOLTA accounts are NOW accounts. All of them have the same Georgia Bar Foundation tax ID number, which is: 58-0552594.

2. Check to see if the software your bank uses to manage NOW accounts has an IOLTA module. If yes, use it. If no, then the NOW system that puts the interest in the account must be used. You will need to make a manual entry for each IOLTA account, removing the interest paid into the IOLTA account and putting it in a holding account. After all interest from all IOLTA accounts has been removed, you will then either write a check to the Georgia Bar Foundation or send the funds to the Georgia Bar Foundation electronically.

3. Along with the interest, you will need to send the Bar Foundation for each account for each month of interest remitted the following information: a) name of the law firm or lawyer; b) the account number; c) the period for which interest is being remitted; d) the interest rate applied; e) the average balance against which the interest rate was applied; f) the gross interest generated; g) the service charge assessed against the gross interest if the account is not free; h) and the net interest remitted.

4. Please note that, if the service charge is greater than the gross interest, the bank cannot remit to the Bar Foundation less money from any other IOLTA accounts at the bank to make up for the loss on that one account. The bank may charge the law firm/lawyer customer or waive the charge or some combination of the two.

5. The general rule is that the only charge that can be assessed against the gross interest on an IOLTA account is a simple service charge. As a result of specific requests from law firms or lawyers in accordance with the Supreme Court of Georgia's IOLTA rule, the following charges have been examined and rejected as inappropriate to charge against the gross interest on IOLTA accounts: check printing charges, NSF charges, overdraft interest charges, account reconciliation charges, stop payment charges, wire transfer fees, and courier fees.

6. Payment to the Georgia Bar Foundation. A financial institution may make payment to the Bar Foundation by writing a check to Georgia Bar Foundation and mailing it to our lockbox at P.O. Box 101528, Atlanta, GA 30392. Or it can be ACHed to routing number: 061000227, Wachovia Account number 2000185534952.

7. Reporting required in number 3 above can be made on paper sent to the lockbox with the payment or, if payment is via ACH, it can be mailed to P.O. Box 101528, Atlanta, GA 30392. Or reporting can be attached to an email addressed to gabarfou@bellsouth.net. The Bar Foundation can read Excel and virtually any other file format.

8. Because the Georgia Bar Foundation is a 501(c)(3) charitable organization, no 1099 needs to be sent to the Bar Foundation or the lawyer. If you are sending a 1099 reporting interest earned to the law firm or lawyer, you have incorrectly set up the IOLTA account with the law firm's or lawyer's tax ID number rather than the Bar Foundation's ID as required in number 1 above. In the event of that mistake, you will need to create a corrected 1099, which shows no income to the law firm or lawyer.

9. Financial institutions have the legal right to make charges against IOLTA accounts as stipulated in the IOLTA order of the Supreme Court of Georgia only as indicated in 5 above. Because lawyers typically put only client money into the account, charging the law firm by reducing the balance in the account will become a nuisance for lawyers because they will be forced to deposit money into the account each month to preserve the exact amount of client money in the account. The Bar Foundation recommends that the financial institution work out an agreement with the law firm or lawyer to charge the firm's or lawyer's operating account. Also, if you permit a totally free IOLTA account if the average balance is equal or greater than some minimum, the Bar Foundation recommends that you offer the law firm or lawyer a free IOLTA account if the required minimum is kept in the firm's or lawyer's operating account.

10. To set up an IOLTA account, each law firm or lawyer will need to sign a Notice to Financial Institution Form. Available on www.gabar.org under Related Organizations and then under IOLTA/Georgia Bar Foundation, it can be downloaded and read/printed by Adobe Acrobat Reader, which is a free download for any computer from www.adobe.com. This form is actually a contract with your financial institution that gives you the legal right to remit interest on the law firm's or lawyer's IOLTA account to the Georgia Bar Foundation.

11. As you know, IOLTA accounts are NOW accounts, which are usually held by individuals. Federal law, however, permits charitable organizations to have NOW accounts. But law firms or lawyers are not charitable organizations, so how can it be legal for law firms or lawyers to have them? Because the tax ID number of the IOLTA account is that of the Georgia Bar Foundation, which is a charity, the law firm or lawyer is legally permitted to have the account.

12. IOLTA account names should be as follows: Jones, Smith, & Thomas IOLTA Trust Account or William J. Jones, Attorney IOLTA Trust Account.

13. Exemptions. Law firms and lawyers can be exempted from the IOLTA requirement. In other words, the account does not have to be interest bearing. If the average monthly balance is \leq \$5,000, then the account can be exempted from having to be an IOLTA account that pays interest to the Georgia Bar Foundation. To obtain that exemption, the law firm or lawyer must write a letter to the Georgia Bar Foundation requesting the exemption. If the account is already open, the letter must include the last three months of bank statements. If the account is new or is not yet open, then the letter must state that the law firm or lawyer does not believe that the average monthly balance will exceed \$5,000. It usually takes 10 days or so to obtain the exemption, which permits the trust account to be exempt for a three-year period.

14. Trust accounts for individual clients. IOLTA accounts are designed to hold the client money from more than one client. The amount of money deposited into the IOLTA account typically is small and, if invested for that one client, not capable of generating a net interest income to the client. If it were, the law firm or lawyer would invest the money for the benefit of that client. If the law firm or lawyer needs to hold a significant amount of money from one client, that money is usually invested to generate income for that one client. In that case the financial institution will need to generate a 1099 during tax season showing income to the client. The law firm or lawyer should give that account the title Jones, Smith & Thomas Trust Account for Charles Client. It is not an IOLTA account.

15. A firm outside Georgia may open an IOLTA account in Georgia only if the financial institution in Georgia agrees to remit IOLTA interest and reporting information to the other state's IOLTA organization. Georgia law firms may open IOLTA accounts in other states only if those banks agree to remit IOLTA interest and account information to the Georgia Bar Foundation and to comply with requirements of the General Counsel of the State Bar of Georgia.

16. To protect the public further, Georgia and many other states require financial institutions to report overdrafts on trust accounts. In Georgia, you are required to report such infractions to the General Counsel of the State Bar of Georgia only if the overdraft has not been remedied within a three-day period starting when the overdraft occurred. Please report any overdrafts to Regina Kelley, Overdraft Coordinator, in the Office of the General Counsel of the State Bar of Georgia at 104 Marietta Street, Atlanta, GA 30303, or call 404-587-8720.

17. If you have other questions about IOLTA accounts, please call Len Horton at 404-588-2239. Thank you for your interest in IOLTA and your support of IOLTA accounts in Georgia. I hope this information proves useful to you as you endeavor to serve your lawyer customers.