

Frequently Asked Questions About Implementing the New IOLTA Rule

Recent changes to West Virginia's IOLTA account rule require that only the name of the attorney or firm holding the funds in trust should be on the IOLTA account, with the interest paid to the West Virginia State Bar. Below are answers to three frequently asked questions about how to implement the new rule.

Question: Does the new rule apply only to new accounts?

Answer: Yes.

The new rule is effective as of September 29, 2014. The rule does not address retroactivity, but the West Virginia State Bar and its IOLTA Advisory Committee interpret the new rule to apply only to new accounts opened on or after the effective date (September 29, 2014). Accordingly, IOLTA accounts opened on or after September 29, 2014, must be titled "[Attorney/Firm Name], IOLTA Trust Account." The West Virginia State Bar is *not* an account owner even though the account is established under the State Bar's tax identification number.. Interest should still be paid to the West Virginia State Bar.. Although this requirement under the Rule is new, we believe many accounts are currently established in compliance with the new Rule and therefore will not need to be changed.

Question: Do we need to worry about the tax implications of using the attorney or firm name and the State Bar's tax identification number?

Answer: No, as long as the bank obtains from the attorney a W-9 from the State Bar verifying the State Bar's tax identification number. Additionally, the State Bar is exempt from income reporting, so you should not issue 1099-INTs.

The IOLTA trust account is owned by the attorney or firm, and so is properly set up with the attorney or firm as the owner, even though the State Bar is entitled to the interest.

Additionally, as an instrumentality of the state, the West Virginia State Bar is exempt from withholding and income-reporting requirements under the Internal Revenue Code. Accordingly, bank should suppress 1099-INT reporting internally. Suppressing 1099-INT reporting should resolve any other issues regarding tax identification mismatches.

We recognize that many account agreements require the owner to certify that the tax identification number on the account is the owner's tax identification number. Banks are encouraged to consult with their legal counsel and their operations staff regarding how best to address this unique situation. Possible solutions include adding an addendum to the account agreements, developing an account agreement for IOLTA accounts, or manually marking account agreements to reflect that the certification is with respect to the State Bar.

Question: Since the new rule only applies to new accounts, do we need to change existing accounts to comply with the new rule?

Answer: Eventually, yes. We recommend transitioning existing accounts to comply with the new rule as quickly as reasonably possible.

The West Virginia State Bar and its IOLTA Advisory Committee have taken the position that the intent of the new rule is not to require banks to immediately change all of their existing IOLTA accounts to comply with the new rule, recognizing that such a requirement would be both unreasonable and unduly burdensome. However, to eliminate confusion and for consistency, and to better reflect the true ownership of the IOLTA accounts, banks should adopt a plan for transitioning existing IOLTA accounts to comply with the naming conventions in the new rule.