

IRS Backup Withholding Requirement Has IOLTA Ethical Implications

Legal Name and Tax ID Must Match

- Starting on January 1, 2013, your credit card processing company may be required to withhold tax at 28% from your clients' credit card payments.
- This requirement applies even if the payment is made into your IOLTA account, but the withholding is effectively a prepayment of your federal income tax.
- If the payment is intended for your IOLTA account, the withholding raises ethical issues.
- The withholding does not apply if your legal name and your tax identification number (TIN) on file with your credit card processing company exactly match those on file with the IRS.

Notification from Credit Card Processing

- The credit card processing company should have received information from the IRS if a mismatch has already occurred and notified you of the problem. However, it is not known whether all credit card processing companies have provided such notice.
- Several steps are required before backup withholding begins, but practitioners should take precautionary steps now.

Steps You Can Take Now

- Contact your credit card processing company to verify that a match occurred (your legal name and federal TIN match the legal name and federal TIN on file with the IRS).

- Correct the mismatch if informed of one.
- Act now to avoid withholding.

Further Information

- IRS Publication 1281:
<http://www.irs.gov/pub/irs-pdf/p1281.pdf>.
- Notice 2011-88:
<http://www.irs.gov/pub/irs-drop/n-11-88.pdf>.
- New IRS Section 6050W What Is It, and How It Affects Attorneys from LawPay:
<https://www.lawpay.com/news/irs60502.pdf>.
- For members of Bloberg BNA, www.bna.com, refer to Tax Practice Series: Tax Practice and Procedure ¶3820: Tax Returns and Information Returns, Explanation – 3820.04 Withholding Tax Returns – ¶3820.04.G. Backup Withholding.

This information was originally provided by the ABA Commission on IOLTA. Our thanks to the following for their assistance in supplementing and clarifying this issue: Bernard A.M. Chamberlain, J.D., L.L.M. Taxation (<http://chamberlainlawpc.com/>); Hertsel Shadian, J.D., L.L.M. Taxation (<http://www.shadianlaw.com>); and Hoang Nguyen, CPA.

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