

OPERATING ENGINEERS TRUST FUNDS JOINT CONTRIBUTIONS COMMITTEE

Mistaken Employer Contribution Policy and Procedures

Purpose

This policy establishes guidelines for mistaken contributions and overpayments received from a contributing employer.

Application

This policy document applies to all contributing employers that make erroneous payments or overpayments to one or more of the Operating Engineers Trust Funds (OETrust Funds), due to a mistake of fact or law.

Policy Statement

The Agreements and Declarations of Trust ("Trust Agreements") under which the various OE Trust Funds have been established and maintained provide that the Trustees of the each Fund have the authority to establish policies, rules and procedures which the Trustees determine to be necessary to accomplish the purposes of the Funds, and more specifically they provide that the Trustees or a committee appointed by them have the discretion to adopt rules and procedures concerning employer payments to the Funds. Furthermore, the Trust Agreements provide that no contributing employer shall receive any refund of contributions made to a Fund except as provided by ERISA; and under no circumstances will any portion of the Fund revert or inure to the benefit of any contributing employer.

The OE Trust Funds rely on the contributing employers to make accurate reports and pay contributions consistent with those reports. Credit is earned and benefits are paid to participants based on these reports. Funding, investments, actuarial, plan design and benefit decisions are based on the assets held by each Fund. Participants and beneficiaries make important life decisions regarding work, retirement and medical care based on their reported eligibility and earned credit. The Trustees have determined that delays in requests for refunds of erroneous contributions by employers increases the administrative costs to correct the employer's mistake, makes it more likely that benefits have been paid in reliance on the erroneous contributions, makes it more likely that the Funds have notified participants of their status and eligibility based on the erroneous contributions, and makes it more likely that the Funds have made actuarial and other planning decisions based on financial data which includes the erroneous contributions. The Trustees have determined that both the Funds' financial soundness and the participants' financial well being will be placed in jeopardy if the Funds were to provide to employers unlimited refunds for erroneous contributions or overpayments made without regard to the passage of time between the date the payment is made and the date the error is discovered or the employer requests the refund.

The Trustees hereby find that under certain circumstances, a refund to an employer of erroneous payments or overpayments to the OE Trust Funds, or any one or more of the Funds, may be permitted. It shall be the policy of the OE Trust Funds that except for the limited refunds permitted under this policy, contributions will not be refunded to any contributing employer, regardless of the reasons for the erroneous payment or overpayment or the failure to request the payment per the requirements set forth below. The interpretation and application of this policy is solely within the authority and discretion of the Trustees. The Trustees retain sole authority and discretion to make any equitable determination in the application of this policy. Any decision the Trustees make with respect to refunding contributions will be final and not subject to appeal or further review. References to Trustees in this policy shall also refer to any subcommittee of Trustees duly appointed or designated by the Trustees. The Trustees or any subcommittee thereof may amend or suspend all or any part of these policies and guidelines in their sole and exclusive discretion, as appropriate, regardless of whether there are any refund requests pending, and may apply any amendment or change in policy retroactively to pending requests.

Joint Contribution Committee

The Joint Contribution Committee of the Boards of Trustees (Committee) oversees the collection of all delinquent employers and will have the sole and absolute authority to review, approve or deny any requests for refund of employer contributions. The Chair and Co-Chair of the Committee shall have the authority to appoint individuals, including themselves, to make determinations of refunds between meetings of the Committee subject to the ratification of all actions at the next Committee meeting. The Committee has also delegated authority to the Fund Manager to make determinations of refund requests in certain situations as set out below.

At each meeting of the Committee, the Fund Manager will present a written report of approved refunds.

I. Non Refundable Contributions

- A. No contributions will be refunded more than one year after the contributions are received by the OE Trust Funds, absent extenuating circumstances or unanticipated equitable considerations as, in their sole discretion, may be determined by the Trustees. This provision should not be construed as a promise or guarantee that contributions will be refunded within the one-year period.
- B. Notwithstanding any other provision of this policy, contributions will not be refunded within the one-year period if a participant's receipt of a benefit was based in whole or part in reliance on the contribution for which a refund is requested. For example, if an employee receives a benefit from the Health & Welfare Fund for which the employee would not have been eligible but for the erroneous contribution or overpayment, no refund will be permitted. As another example, if an employee receives a benefit or distribution from the Vacation Holiday Fund that includes or is based on, in whole or part, the erroneous contribution or overpayment, no refund will be permitted. The Committee, or its designees, shall have sole discretion to determine if a refund should be withheld under this provision.

- C. No refunds will be made to an employer with an outstanding delinquency, and will be held at least until the delinquency is resolved.
- D. No contributions will be refunded if the monies are no longer in the possession of the OE Trust Funds because the contributions have been reciprocated to other benefit plans.

II. Exceptions

- A. If it is determined, by the OE Trust Funds that contributions have been made for an individual who is not entitled or eligible, under the rules of the Fund or under the law, to participate in the Fund, the Fund may refund contributions to the employer who made the contribution without regard to the one-year period. The Fund may deduct from the refund any amount it deems appropriate to reimburse the Fund for all costs or benefit payments it incurred or losses it suffered in connection with this erroneous payment. The individual at issue shall be so notified in writing with an explanation of the reasons for the determination and will be given the right to appeal prior to the payment of the refund.

III. Contributing Employer Responsibility

- A. It is the contributing employer's responsibility to make accurate reports to the OE Trust Funds, to perform any internal audit of those contributions in a timely manner so as to discover any errors in time to request a refund under this policy and to carefully review all correspondence from the OE Trust Funds pertaining to the status of the employer's payments to the Funds. Employers should not rely on audits conducted by the OE Trust Funds to identify erroneous payments or overpayments. Typically, these audits occur long after the payments are made, at a time too late to make refunds under this policy.
- B. Any employer requesting a refund of contributions must send a written request to the OE Trust Fund Manager (Fund Manager) identifying the amount of the contribution that the employer desires to be refunded. If the employer believes the contribution was made in error, it must provide an explanation as to the nature of the error. In all cases involving a claim for a refund of erroneous contributions, the employer must conclusively demonstrate that the contributions were made in error. Requests should be sent to the OE Trust Fund Manager at 100 E. Corson St, Attn: Employer Accounting Dept., Pasadena, CA 91103.

IV. OE Trust Funds Responsibility

- A. The Fund Manager will make a determination as to whether or not the refund should be made in accordance with this policy for all amounts under \$25,000.00, subject to ratification by the Joint Contribution Committee of the Board of Trustees (Committee). The Fund Manager may decline to make a determination and refer the refund request to the Committee, or subcommittee designated by the Committee, for a determination. If the Fund Manager makes the determination to deny any refund request, the employer may appeal its determination to the Committee within sixty (60) days from the date of the denial.

- B. If the request for a refund is more than \$25,000.00, it will be referred to the Committee or subcommittee for a determination.
- C. A refund may be delayed until it is verified that the affected participant has no outstanding claims that are capable of being submitted to the OE Trust Funds for payment.
- D. If within one-year from the receipt of contributions the Fund Manager discovers that an employer has made an erroneous payment or overpayment, the Fund Manager will notify the employer and the employer may thereafter make a request for a refund providing it does so within the one-year period.

V. Method of Refund to the Contributing Employer

Approved contribution refunds will be made as a direct payment to the employer and the Operating Engineers Trust Funds Office will issue an IRS 1099 form to the employer for the amount of the refund.

VI. Deductions to Refunds

The OE Trust Funds may deduct any administrative costs and expenses it incurs to correct and refund an erroneous payment or overpayment, including all accounting fees, legal fees and litigation costs. Contribution refunds will not be credited with any interest or investment income, but will be reduced for investment losses.

VII. Service Credits

Any and all service credited to participants based on refunded contributions shall be cancelled.