

MEMORANDUM

TO: All Retirement Boards

FROM: John W. Parsons, Esq., Executive Director

RE: Current Members in Service Who Made an Election at Age 70 to Stop Contributions to the Retirement System

DATE: December 8, 2023

History and Repeal of Section 90G 3/4

Prior to July 1, 2017, an active member of a Chapter 32 retirement system had the choice under G.L. c. 32, § 90G 3/4 to either continue making employee contributions (and accruing creditable service) or stopping contributions (and ceasing the accrual of creditable service) upon reaching age 70. Effective July 1, 2017, Section 90G 3/4 was repealed by Section 28 of Chapter 47 of the Acts of 2017.

The repeal of Section 90G 3/4 eliminated a member's ability to discontinue their contributions, making clear that members who continued in service post age 70 were required to continue making retirement contributions. Furthermore, Section 141 of Chapter 47 of the Acts of 2017 provided for no retroactivity of the repeal, meaning that those who had made an election under G.L. c 32, § 90G 3/4 through June 30, 2017, either to continue in active service or to stop making contributions to the system, would be bound by their previous election.

Enactment of Section 82 of Chapter 28 of the Acts of 2023

On August 9, 2023, Chapter 28 of the Acts of 2023 was signed into law by the Governor. Section 82 of Chapter 28 provides, in pertinent part, as follows:

(a) Notwithstanding section 141 of chapter 47 of the acts of 2017, a member who made an election under section 90G³/₄ of chapter 32 of the General Laws prior to the effective date of section 28 of said chapter 47, may, within 60 days after the effective date of this act, repeal such election and be credited with any years of service subsequent to such election; provided, however, that such member: (i) has maintained continuous service since making such election; and (ii) is a member continuing in service as of the effective date of this act; provided further,



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that such service shall not be credited until such member has paid into the annuity savings fund of such system, in 1 sum or in installments, upon such terms and conditions as the board may prescribe, makeup payments, for all years of additional creditable service after the member attained the age of 70, of an amount equal to the per cent of the regular annual compensation of the member, plus buyback interest....

Section 82 thus instructs that a member in service who, upon reaching age 70, discontinued their retirement contributions pursuant to G.L. c. 32, § 90G 3/4 may be eligible to restart their retirement contributions and receive additional creditable service attained after age 70 if certain conditions are met. Section 82 further required that the State Retirement System determine whether an IRS determination was needed concerning the ability of members to remit these contributions to the retirement systems.

On November 29, 2023, PERAC was officially notified by the State Retirement System that an IRS determination was not necessary. As such, members have 60 days from *November 29, 2023* to avail themselves of the provisions of Section 82, or until *Monday, January 29, 2024*.

Eligibility and Required Steps for Members

Under this legislation, active members of a Chapter 32 retirement system who elected to stop retirement contributions pursuant to G.L. c. 32, § 90G 3/4 are eligible to elect to restart contributions and receive creditable service despite their previous election. The following conditions must be met:

1. The member must have maintained continuous service since making their election to stop contributions,
2. The member must be an active member-in-service as of the effective date of November 29, 2023,
3. The member must elect to restart contributions on or before January 29, 2024, and
4. The member must pay their retirement system all the missed contributions for the years between their election not to continue contributions to the present plus buyback interest.

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To make this election with their retirement board, members should complete the attached *Application by Member Electing to Restart Retirement Contributions Pursuant to Section 82 of Chapter 28 of the Acts of 2023*, which can also be found on the PERAC website.

As noted above, once a member makes an election to restart contributions, they must then pay to the retirement system in either a lump-sum or installment payments, upon such terms and conditions prescribed by the retirement board, their missed contributions for all years of additional creditable service after age 70 plus buyback interest. According to Tax Counsel, these payments may be made with either post-tax funds or via rollovers from eligible pre-tax retirement accounts.

Retirement Boards should immediately identify any active members who fit the above criteria and provide them with the necessary information and the attached form for review.

We trust the foregoing will be of some assistance to you. If you have any further questions, please feel free to contact General Counsel Judith Corrigan at (617) 591-8904 or at judith.a.corrigan@mass.gov. Thank you.

Attachment