

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

BEVERLY ELLIS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 2016-3619
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
	)	
	)	
	)	
_____	)	

**FINAL ORDER**

This matter was initiated by a Request for Intervention, dated March 22, 2016 and submitted by the Petitioner, requesting the issuance of a “corrected” 2015 Internal Revenue Service Form 1099-R (“2015 Form 1099-R”) issued by Respondent to report the distributions from Petitioner’s Florida Retirement System Investment Plan (“FRS Investment Plan”) account made during 2015. Petitioner had terminated employment in 2014, at a time when she was 54 years old. The 2015 Form 1099-R issued to Petitioner set forth a distribution code of “1” that indicated there were no known exceptions from the additional ten percent (10%) Federal Income tax on early distributions from Petitioner’s FRS Investment Plan account. Petitioner has demanded the issuance of a new 2015 Form 1099-R, setting forth a new distribution code that would indicate an exception was applicable. Petitioner’s request for the issuance of a “corrected” form was denied and a Petition for Hearing was filed by Petitioner on July 31, 2016, requesting the same relief.

For the reasons explained in detail below, the Petition for Hearing filed in this case is being dismissed, with prejudice, because Petitioner is not entitled to a hearing to

contest whether the Respondent should be required to issue Petitioner a new 2015 Form 1099-R, setting forth a different distribution code to indicate that Petitioner's account distribution was entitled to an exception from the 10% additional tax on early distributions.

### **STATEMENT OF THE ISSUE**

The Statement of the Issue is whether the Petitioner is entitled to have Respondent issue a new 2015 Form 1099-R showing that the distribution she received in 2015 from her FRS Investment Plan account was entitled to an exception from the 10% additional Federal Income Tax on early withdrawals from a qualified retirement plan.

### **FINDINGS OF FACT**

The Findings of Fact are as follows:

1. On July 1, 1988, Petitioner, an employee of the Palm Beach County Sheriff's Office, originally enrolled in the FRS as a member of the Special Risk Class. At that time, only the FRS Pension Plan, a defined benefit plan, was offered.
2. On December 1, 2003, when Petitioner was given the option to elect between continuing membership in the FRS Pension Plan or joining the newly-created FRS Investment Plan, a defined contribution plan, Petitioner elected to continue participation in the FRS Pension Plan. *See*, Section 121.4501, Florida Statutes.
3. On November 17, 2014, Petitioner used her one-time second election and completed a Form ELE-2, electing to transfer from the FRS Pension Plan to the FRS Investment Plan. The transfer became effective December 1, 2014. *See* Exhibit A, attached hereto.

4. Petitioner terminated employment on November 20, 2014. At the time of termination, Petitioner was 54 years old. See Exhibit B, attached hereto.

5. On December 1, 2014, Petitioner called the MyFRS Financial Guidance line to confirm receipt of her Form ELE-2. Receipt of her form was confirmed. Petitioner then inquired as to what forms were needed to take a distribution from her Investment Plan account and was advised all information was submitted by employer.

6. On December 3, 2014, after she terminated employment, Petitioner telephoned the MyFRS Financial Guidance line with questions regarding the 10% additional Federal Income Tax that is generally imposed, absent an exception, on distributions from a qualified retirement plan made to an individual who has not attained age 59 ½. She was advised that in order to meet an exception, she would have had to terminate employment in 2015.

7. On March 8, 2015, Petitioner attained age 55. On March 10, 2015, Petitioner took a total distribution from her Investment Plan account.

8. In early 2016, Petitioner was issued 2015 Form 1099-R, showing the amount of her distribution and indicating a distribution code of "1-Early distribution, no known exception (in most cases, under age 59 ½)." in Box 7. See Exhibit C, attached hereto.

9. On February 8, 2016, Petitioner telephoned the MyFRS Financial Guidance Line requesting a new 2015 Form 1099-R setting forth an exemption code of "2-Early distribution, exception applies (under age 59 ½)." She was advised that if she believed an exception existed, she would have to file another form - IRS Form 5329-

(Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts)- to claim the exception.

10. Petitioner contends that she is entitled to a corrected 2015 Form 1099-R from Respondent that indicates that the distribution she received was eligible for an exception from the 10% additional Federal Income Tax on early distributions.

11. There are no allegations either in Petitioner's Request for Intervention or Petitioner's Request for Hearing that she did not receive the 2015 Form 1099-R or the distribution from her FRS Investment Plan account. Rather, Petitioner has alleged that she is entitled to have Respondent issue a new 2015 Form 1099-R to her, showing a different distribution code that would allow a certain Federal Income tax exception with respect to that distribution.

### **CONCLUSIONS OF LAW**

12. The Respondent issues a Form 1099-R to any recipient of a distribution from the FRS Investment Plan. Respondent, using information provided by a recipient's employer, attempts to set forth the appropriate distribution code on the form. However, Respondent does not undertake, and is not required by any statute to undertake, any activity to determine the accuracy of the information provided by the employer.

13. Generally, the amounts an individual withdraws from a qualified retirement plan, such as the Investment Plan, before the individual reaches age 59½ are considered as being "early" or "premature" distributions. Individuals receiving such a distribution must pay an additional 10% early withdrawal tax, unless an exception applies. *See*, Internal Revenue Code Section 72(t)(1) and (2); and Exhibit D, IRS Retirement Topics- Exceptions to Tax on Early Distributions, attached hereto.

14 An exception from the 10% early distribution tax does exist for distributions which are made to an employee who separates from service during or after the year in which the employee attains age 55. *See*, Internal Revenue Code Section 72(t)(2)(A)(v); Exhibit D, page 2.

15. Effective for distributions made after December 31, 2015, an exception from the 10% early withdrawal penalty exists for distributions from a defined contribution plan such as the FRS Investment Plan or other types of governmental plans to public safety employees. *See*, Internal Revenue Code Section 72(t)(10), as amended by the Defending Public Safety Employees Retirement Act, P.L. 114-26.

16. If an exception from tax applies but the recipient of a distribution receives a Form 1099-R showing a distribution code “1- Early distribution, no known exception,” in box 7 of the form, the recipient of the distribution must file Form 5329 (Additional Taxes on Qualified Plans and Other Tax-Favored Accounts) showing the amount of the distribution that can be excluded from income and the exception number shown in the Form 5329 instructions. *See*, Exhibit E, IRS Publication 575- Pension and Annuity Income (2015), page 33. There is no requirement that a Plan Sponsor, such as the Respondent, issue a new Form 1099-R or take any other action.

17. Petitioner’s dispute as to the taxation by the Internal Revenue Service of the distributions she received during 2015 is with the IRS, not Respondent. The Respondent is neither required, nor authorized, by any statute to take any further action in Petitioner’s matter, such as re-issuing Petitioner another 2015 Form 1099-R showing a different distribution code. As such, the Respondent has no jurisdiction to determine in an administrative proceeding whether Petitioner was entitled to an exception from

Federal Income Tax when she received the distributions from her FRS Investment Plan account in 2015 after she had terminated employment in 2014 at a time she had not yet attained age 55. Further, Respondent has no jurisdiction to determine whether Petitioner meets the definition of a “qualified public safety employee,” an exception that became effective for distributions made from defined contribution plans after December 31, 2015.

18. Chapter 120, Florida Statutes, known as the “Administrative Procedure Act” or “APA,” requires a Florida governmental entity, such as Respondent, to afford a hearing to individuals who are “substantially affected” by agency action. Sections 120.569 and 120.57, Florida Statutes. “Agency action” is defined by the APA as:

the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order. The term also includes any denial of a request made under s. 120.54(7).

Section 120.52(2), Florida Statutes. “Order” itself is not defined by the APA, but a “final order” is defined as a final written decision which is not a rule, that results from a rule challenge proceedings, a request for a declaratory statement, a proceeding affecting a substantial interest (including informal and formal proceedings and bid protests), a mediation or summary hearing of such a proceeding. A “rule” is defined in pertinent part as “each agency statement of general applicability that implements, interprets, or prescribes law or policy...” Section 120.52(16), Florida Statutes.

19. Since the APA is concerned only with agency action (whether a rule or an order), it is not geared toward giving the public a right to challenge every step that a Florida government agency takes. The APA allows challenges to agency action (i.e., a rule or order) only by those who have sufficient “substantial interests.” In order to demonstrate sufficient substantial interests for standing, a party must show that (a) he or

she will suffer an injury of sufficient immediacy to be entitled to a hearing, and that (2) his or her substantial injury is of the type or nature which the proceeding is designed to protect. *See, Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2nd DCA 1981). Simply being a Florida resident is not sufficient to confer standing to challenge agency action.

20. While there is no doubt that the ultimate outcome of the taxation issue could cause substantial economic injury to the Petitioner, the issue as to whether or not Petitioner meets the criteria for an exception from the 10% early distribution tax on the distribution from her Investment Plan account is solely within the purview of the IRS. The act of issuing a 2015 Form 1099-R to Petitioner does not have the force or effect of law and does not otherwise meet the definition of a rule or order under the APA. As such, Respondent has not taken agency action against Petitioner that has substantially affected her and, resultantly, Petitioner has no right to a hearing to contest whether the Respondent should issue the Petitioner a new 2015 Form 1099-R setting forth a different distribution code in Box 7 of the form. Information promulgated by the IRS expressly states that recipient of a distribution from a qualified retirement plan for which a code of "1" was incorrectly shown in Box 7 of Form 1099-R must file Form 5329 (Additional Taxes on Qualified Plans and Other Tax-Favored Accounts), showing the amount of the distribution that can be excluded from income and the exception number shown in the Form 5329 instructions.

21. This Final Order should not be interpreted as a rejection of Petitioner's assertion that she is entitled to an exception from Federal Income Tax on the distributions

she received from her FRS Investment Plan account. That is an issue to be determined in another forum where the jurisdiction to make such a determination properly lies.


**ORDER**

The Petitioner's request for a hearing to demonstrate entitlement to a re-issued 2015 Form 1099-R from Respondent, setting forth a different distribution code in Box 7, hereby is denied, with prejudice.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the State Board of Administration in the Office of the General Counsel, State Board of Administration, 1801 Hermitage Boulevard, Suite 100, Tallahassee, Florida, 32308, and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within thirty (30) days from the date the Final Order is filed with the Clerk of the State Board of Administration.

DONE AND ORDERED this 7<sup>th</sup> day of November, 2016, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



**Joan Haseman**, Chief of Defined Contribution  
Programs  
State Board of Administration  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, Florida 32308  
(850) 488-4406



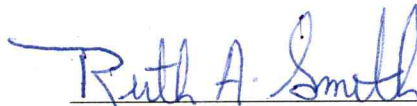
FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.



Tina Joanos,  
Agency Clerk

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent by email and U.S. Mail to [REDACTED] this 7<sup>th</sup> day of November, 2016.



Ruth A. Smith  
Assistant General Counsel  
State Board of Administration of Florida  
1801 Hermitage Boulevard  
Suite 100  
Tallahassee, FL 32308

**EXHIBIT A**



# 2<sup>nd</sup> Election EZ Retirement Plan Enrollment Form



Before completing this form, read the information on page 2.

**RETIREMENT PLAN 2<sup>nd</sup> ELECTION (You MUST complete this form and return it to the address noted below.)**

PLEASE PRINT	LAST NAME	FIRST	MIDDLE INITIAL
	Ellis	Beverly	A
SOCIAL SECURITY	[REDACTED]	DATE OF BIRTH (MM/DD/YYYY)	[REDACTED]
	8413		

I am exercising my one-time 2<sup>nd</sup> Election to: (Choose only one by marking an X in the appropriate box.)

- 1. **Change from the FRS Investment Plan or FRS Hybrid Option to the FRS Pension Plan** (Review page 2, Sections 1 and 3.) You understand you are using your existing Investment Plan account balance and possibly other personal resources to "buy" into the Pension Plan.
- 2. **Change from the FRS Pension Plan to the FRS Investment Plan** (Review page 2, Sections 1, 2 and 3.) You understand you are transferring the present value, if any, of your Pension Plan benefit to the Investment Plan. You understand that future employee and employer contributions will be deposited in your Investment Plan account and that your assets will be deposited in an age appropriate Retirement Date Fund based on your current age. (If you are currently a member of the Hybrid Option, you cannot select this option.)
- 3. **Change from the FRS Pension Plan to the FRS Hybrid Option** (Review page 2, Sections 1, 2 and 3.) You understand you are retaining any accrued benefit in the Pension Plan and future employee and employer contributions will be deposited in your Investment Plan account and that your assets will be deposited in an age appropriate Retirement Date Fund based on your current age. To select this option you must have 8 years of Pension Plan service if you were initially enrolled in the FRS on or after July 1, 2011 or 5 years of Pension Plan service if you were initially enrolled in the FRS prior to July 1, 2011.

**SIGN HERE (Your form cannot be processed without your acknowledgement and signature.)**

By signing this form, I acknowledge that I have read and understand the information on page 2 and certify all completed information above to be true and correct.

Signature: Beverly Ellis Date: 11/17/2014 Daytime Telephone Number: [REDACTED]

E-mail Address (optional): Monti.ago23@gmail.com Employing Agency (optional): Palm Beach Only Sheriff's office

**FAX OR MAIL YOUR COMPLETED FORM TO:**

Fax: 1-888-310-5559  
 (Do not include a cover sheet and retain the original for your records)  
 (Do not mail this form to your employer or to the Division of Retirement and retain a copy for your records.)

Mail: FRS Plan Choice Administrator  
 P.O. Box 785027  
 Orlando, FL 32878-5027

**CAUTION: Your form will not be processed if you submit a form that does not indicate your 2<sup>nd</sup> Election plan choice or does not have your signature or Social Security number. You will be notified if your form is incomplete and was not processed. You must submit a new completed form in order for your 2<sup>nd</sup> Election to be processed. Keep a copy for your records.**

**Your 2<sup>nd</sup> Election will become final at 4:00 p.m. ET on the day it is received** by the FRS Plan Choice Administrator. This form must be received by the FRS Plan Choice Administrator no later than 4:00 p.m. ET on the last business day you are earning salary and service credit and prior to your date of termination or it will be invalid. If you later feel this retirement plan choice was made in error, you may be able to cancel it. Please call the MyFRS Financial Guidance Line at 1-866-446-9377, Option 2. Failure to notify us prior to the last business day of the month following your election month will void your right to cancel this election.

A confirmation statement will be mailed to your address of record once your completed form is received and processed. Please allow 2 to 3 weeks to receive it. Your address of record is provided to the FRS by your employer. It is your responsibility to make sure your employer is notified of any address changes.

### BENEFICIARY DESIGNATION

You can designate a beneficiary at any time. If you do not designate a beneficiary, your benefits (if any) will be distributed in the event of your death in accordance with s. 121.091(8) or s. 121.4501(20), Florida Statutes, as applicable. You can designate a beneficiary by completing a Beneficiary Designation Form (BEN-001 Pension Plan or IPBEN-1 Investment Plan). Both forms are available online at MyFRS.com or by calling the MyFRS Financial Guidance Line.

**IMPORTANT INFORMATION - Review Carefully**

Your 2<sup>nd</sup> Election retirement plan change becomes effective on the first day of the month after the Plan Administrator receives your form, provided it is complete and signed. **You must be actively employed earning salary and service credit when your form is received by the FRS Plan Choice Administrator.** If you are leaving FRS-covered employment, this form must be received prior to your termination date. If you are on an unpaid leave of absence or you are an employee of an educational institution on summer break, you cannot use your 2<sup>nd</sup> Election until you return to work. If it is subsequently determined that you were not eligible to make a plan choice, your election will be considered invalid and will be reversed. For your plan change to occur in a specific month, the form must be received no later than 4 PM ET on the last business day of the month prior to the effective month. If you have questions, call the MyFRS Financial Guidance Line. **Before you change retirement plans, take advantage of the FREE resources offered through the MyFRS Financial Guidance Program to help you understand the impact of changing from one plan to another.** These resources include the toll-free MyFRS Financial Guidance Line at 1-866-446-9377, Option 2 and the 2<sup>nd</sup> Election CHOICE SERVICE, an online benefits projection tool available at MyFRS.com or by calling the MyFRS Financial Guidance Line.

**Section 1: Plan Choice**

You understand that your one-time 2<sup>nd</sup> Election is irrevocable and that you must remain in the plan you chose on page 1 until your FRS-covered employment ends and you retire.

**If you selected Option 1 (Page 1):** You understand that the Pension Plan is a defined benefit plan, which will provide you with benefit payments at retirement if you meet certain criteria. As of the most recent actuarial valuation date, the FRS actuarial liability exceeded the actuarial value of its assets yielding an unfunded actuarial liability. This liability may increase or decrease in the future. The Legislature may increase or decrease the amount that you and your employer contribute to this plan to keep it actuarially funded. You have elected to switch to the Pension Plan and understand there may be a buy-in cost to make this plan change. You can find out the buy-in cost by calling the MyFRS Financial Guidance Line, Option 3, to connect to the Division of Retirement. You understand you may be required to pay an additional amount if the buy-in cost is greater than your current Investment Plan account balance. You authorize the Investment Plan Administrator to use any funds in your Investment Plan account to activate your 2<sup>nd</sup> Election to switch to the Pension Plan. These funds may include prior-career benefits and rollover money in your account. You understand you have the ability to move your Investment Plan account balance into conservative investment options within the Investment Plan in order to potentially reduce the volatility of your account balance prior to liquidation and movement to the Pension Plan.

**If you selected Option 2 (Page 1):** You understand and acknowledge the following: You have elected to switch to the Investment Plan and that any accrued value you may have in the Pension Plan will be transferred to the Investment Plan as your opening account and any Pension Plan accrued value transferred to your account will be subject to the vesting requirement of the Pension. You can find out the accrued value of your Pension Plan account by calling the MyFRS Financial Guidance Line, Option 3, to connect to the Division of Retirement. The initial transfer amount is an estimate and your account will be reconciled within 60 days of that transfer pursuant to Florida law using your actual FRS membership record. The reconciled amount could be more or less than the estimate you receive and your account will be adjusted accordingly. You direct all future contributions be deposited in my Investment Plan account.

**If you selected Option 3 (Page 1):** You understand and acknowledge that you have elected to switch retirement plans to the Hybrid Option and that the accrued value of your current Pension Plan benefit will remain in your Pension Plan account. You understand that an Investment Plan account will be established to receive all future contributions.

**If you selected Option 2 or 3 (Page 1):** You understand and acknowledge that your Plan assets will be invested in an age appropriate Retirement Date Fund based on your current age as provided under Plan provisions, that other investment funds are available to you, and that you can change your fund allocations at any time after your account is activated by logging onto MyFRS.com or by calling the toll-free MyFRS Financial Guidance Line, Option 4. You understand that your account will be available at the end of your effective date month, and you should review the Fund Profiles, the Investment Fund Summary and the Annual Fee Disclosure at MyFRS.com before selecting any investment funds or submitting this form. You understand that the Investment Plan is not designed to facilitate short-term excessive fund trading. Foreign and global investment funds are subject to a minimum holding period of 7 calendar days following any non-exempt transfers into such funds and you may be subject to trading controls on other funds in the event that you trade excessively. You understand that investment management fees will be deducted from your Investment Plan account, that these fees may change in the future and that funds may be added or terminated. You understand that if any of the funds you select in the Investment Plan are terminated in the future, you will be able to move your assets into other investment funds prior to termination. If you do not move your assets in the terminated fund(s), they will automatically be moved into a replacement fund designated at that time. You understand that if you terminate FRS-covered employment and you are vested in your account balance, you may be subject to a mandatory payout of your account if the balance is \$1,000 or less or an account maintenance fee of \$6 per quarter if your account balance is more than \$1,000. You understand that Sections 121.4501(8)(b)2 and 121.4501(15)(b) of Florida law incorporate the federal law concept of participant control, established by regulations of the U.S. Department of Labor under Section 404(c) of the Employee Retirement Income Security Act of 1974. If you exercise control over the assets in your Investment Plan account, pursuant to Section 404(c) regulations and all applicable laws governing the operation of the Investment Plan, no program fiduciary shall be liable for any loss to your account which results from your exercise of control.

You understand that the Investment Plan is a defined contribution plan in which the Florida Legislature can increase or decrease the amount that you and your employer contribute to your account.

You can find a description of your rights and responsibilities under the Pension Plan, the Investment Plan and the Hybrid Option in the respective Summary Plan Descriptions, Florida Statutes, and Administrative Rules by calling the MyFRS Financial Guidance Line, Option 2, or visiting MyFRS.com.

**SECTION 2: INVESTMENT PLAN FUND SELECTIONS (Review if you selected Option 2 or 3 on page 1)**

You have a suite of 10 retirement date funds and 11 investment options to choose from. Please use the free MyFRS Financial Guidance Program resources to help you understand your investment fund choices.

MyFRS Financial Guidance Line 1-866-446-9377 MyFRS.com

**EXHIBIT B**

AM110 - Maintain Member

SSN: [REDACTED] 8413 Name: ELLIS, BEVERLY A. DOB: [REDACTED]  
Secure:  DOD: 00/00/0000  
Retirement: [REDACTED] Refund  LOA  DRP: N/A DRP End: N/A  
Curr. Election: [REDACTED] Remai. Elections 2 Discrepancy:  Buy Back:  Legal Block

AM125 - Contribution Account Detail

Reported Contribution

SSN :	[REDACTED]	SSN :	[REDACTED]
Employee :	ELLIS, BEVERLY A	Empl	[REDACTED]
Agency :	60006 PALM BEACH CO SHERIFF'S DEPT	Agenc	[REDACTED]
Plan :	PB	Plan :	[REDACTED]
Check Date :	12/01/2014	Check	[REDACTED]
Report Date :	12/01/2014	Repor	[REDACTED]
Annual Lv. Hrs :	.00	Annur	[REDACTED]
Adj Code :	[REDACTED]	Adj C	[REDACTED]
Work Period :	12	Work	[REDACTED]
Department :	3020	Depar	[REDACTED]
Hire Date :	07/07/1988	Hire C	[REDACTED]
Termination :	11/20/2014	Termin	[REDACTED]
Position Num.:	3020	Annur	[REDACTED]
Mand ORP :	N	Positi	[REDACTED]
Class Code:	03501	Mand	[REDACTED]
Birth Date :	03/06/1960	Class	[REDACTED]
Gender :	F	Birth I	[REDACTED]
Address :	[REDACTED]	Gener	[REDACTED]
Out of Country :	[REDACTED]	Addre	[REDACTED]
City :	[REDACTED]	Out o	[REDACTED]
State	FL	City :	[REDACTED]
Comments		State	[REDACTED]
		Zip :	34953-
		Comm	[REDACTED]

EXHIBIT C

0106161-2015

VOID  CORRECTED

PAYER'S name, street address, city, state, and ZIP code BNY MELLON DISBURSEMENT AGENT INFO CENTER: 1-(866) 446-9377 FRS INVESTMENT PLAN ADMN P O BOX 785027 ORLANDO FL 32878-5027		1 Gross distribution \$ [REDACTED]	OMB No. 1545-0119	Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
PAYER'S Federal identification number 25-1926855		2a Taxable amount \$ [REDACTED]		
RECIPIENT'S identification number XXX-XX-8413		2b Total distribution \$ [REDACTED]		
RECIPIENT'S name, street address (including apt. no.), city, state, and ZIP code BEVERLY A ELLIS [REDACTED]		3 Capital gain (included in box 2a) \$ [REDACTED]		Copy B Report this income on your Federal tax return. If this form shows Federal income tax withheld in box 4, attach this copy to your return.
10 Amount allocable to IRR within 5 years \$ [REDACTED]		5 Employee contributions / Designated Roth contributions or insurance premiums \$ [REDACTED]	7 Distribution code(s) 1	
Account number (see instructions) FSR01T0G250000 EN7437		12 State tax withheld \$ [REDACTED]	13 State/Payer's state no. FL 25-1926855	This information is being furnished to the Internal Revenue Service.
		15 Local tax withheld \$ [REDACTED]	16 Name of locality	

Form 1099-R

Department of the Treasury - Internal Revenue Service

0106161-2015

VOID  CORRECTED

PAYER'S name, street address, city, state, and ZIP code BNY MELLON DISBURSEMENT AGENT INFO CENTER: 1-(866) 446-9377 FRS INVESTMENT PLAN ADMN P O BOX 785027 ORLANDO FL 32878-5027		1 Gross distribution \$ [REDACTED]	OMB No. 1545-0119 <b>2015</b> Form 1099-R	Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
PAYER'S Federal identification number 25-1926855		2a Taxable amount \$ [REDACTED]		
RECIPIENT'S identification number XXX-XX-8413		2b Total distribution \$ [REDACTED]		
RECIPIENT'S name, street address (including apt. no.), city, state, and ZIP code BEVERLY A ELLIS [REDACTED]		3 Capital gain (included in box 2a) \$ [REDACTED]	4 Federal income tax withheld \$ [REDACTED]	Copy C For Recipient's Records
10 Amount allocable to IRR within 5 years \$ [REDACTED]		5 Employee contributions / Designated Roth contributions or insurance premiums \$ [REDACTED]	6 Net unrealized appreciation in employer's securities \$ [REDACTED]	
Account number (see instructions) FSR01T0G250000 EN7437		12 State tax withheld \$ [REDACTED]	13 State/Payer's state no. FL 25-1926855	This information is being furnished to the Internal Revenue Service.
		15 Local tax withheld \$ [REDACTED]	16 Name of locality	

Form 1099-R

Department of the Treasury - Internal Revenue Service

0106161-2015

VOID  CORRECTED

PAYER'S name, street address, city, state, and ZIP code BNY MELLON DISBURSEMENT AGENT INFO CENTER: 1-(866) 446-9377 FRS INVESTMENT PLAN ADMN P O BOX 785027 ORLANDO FL 32878-5027		1 Gross distribution \$ [REDACTED]	OMB No. 1545-0119 <b>2015</b> Form 1099-R	Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
PAYER'S Federal identification number 25-1926855		2a Taxable amount \$ [REDACTED]		
RECIPIENT'S identification number XXX-XX-8413		2b Total distribution \$ [REDACTED]		
RECIPIENT'S name, street address (including apt. no.), city, state, and ZIP code BEVERLY A ELLIS [REDACTED]		3 Capital gain (included in box 2a) \$ [REDACTED]	4 Federal income tax withheld \$ [REDACTED]	Copy 2 File this copy with your state, city, or local income tax return when required
10 Amount allocable to IRR within 5 years \$ [REDACTED]		5 Employee contributions / Designated Roth contributions or insurance premiums \$ [REDACTED]	6 Net unrealized appreciation in employer's securities \$ [REDACTED]	
Account number (see instructions) FSR01T0G250000 EN7437		12 State tax withheld \$ [REDACTED]	13 State/Payer's state no. FL 25-1926855	This information is being furnished to the Internal Revenue Service.
		15 Local tax withheld \$ [REDACTED]	16 Name of locality	

Form 1099-R

Department of the Treasury - Internal Revenue Service



## Instructions for Recipient *(Continued)*

distribution (other than a distribution from a designated Roth account) from a qualified plan (including a governmental section 457(b) plan) or section 403(b) plan to a Roth IRA, you must include on the "Taxable amount" line of your tax return the amount shown in this box plus the amount in box 6, if any.

If this is a total distribution from a qualified plan and you were born before January 2, 1936 (or you are the beneficiary of someone born before January 2, 1936), you may be eligible for the 10-year tax option. See the Form 4972 instructions for more information.

If you are an eligible retired public safety officer who elected to exclude from income distributions from your eligible plan used to pay certain insurance premiums, the amount shown in box 2a has not been reduced by the exclusion amount. See the instructions for Form 1040, 1040A, or 1040NR for more information.

**Box 2b.** If the first box is checked, the payer was unable to determine the taxable amount, and box 2a should be blank, except for an IRA. It is your responsibility to determine the taxable amount. If the second box is checked, the distribution was a total distribution that closed out your account.

**Box 3.** If you received a lump-sum distribution from a qualified plan and were born before January 2, 1936 (or you are the beneficiary of someone born before January 2, 1936), you may be able to elect to treat this amount as a capital gain on Form 4972 (not on Schedule D (Form 1040)). See the Form 4972 instructions. For a charitable gift annuity, report as a long-term capital gain as explained in the Instructions for Form 8949.

**Box 4.** Shows federal income tax withheld. Include this amount on your income tax return as tax withheld, and if box 4 shows an amount (other than zero), attach Copy B to your return. Generally, if you will receive payments next year that are not eligible rollover distributions, you can change your withholding or elect not to have income tax withheld by giving the payer Form W-4P.

**Box 5.** Generally, this shows the employee's investment in the contract (after-tax contributions), if any, recovered tax free this year; the portion that is your basis in a designated Roth account; the part of

premiums paid on commercial annuities or insurance contracts recovered tax free; or the nontaxable part of a charitable gift annuity. This box does not show any IRA contributions. If the amount shown is your basis in a designated Roth account, the year you first made contributions to that account may be entered in box 11.

**Box 6.** If you received a lump-sum distribution from a qualified plan that includes securities of the employer's company, the net unrealized appreciation (NUA) (any increase in value of such securities while in the trust) is taxed only when you sell the securities unless you choose to include it in your gross income this year. See Pub. 575 and Form 4972. If you roll over the distribution to a Roth IRA, see the instructions for Box 2a. If the distribution was a direct rollover, the NUA is included in box 2a. If you did not receive a lump-sum distribution, the amount shown is the NUA attributable to employee contributions, which is not taxed until you sell the securities.

**Box 7.** The following codes identify the distribution you received. For more information on these distributions, see the instructions for your tax return. Also, certain distributions may be subject to an additional 10% tax. See the Instructions for Form 5329.

- 1—Early distribution, no known exception (in most cases, under age 59½).
- 2—Early distribution, exception applies (under age 59½).
- 3—Disability.
- 4—Death.
- 5—Prohibited transaction.
- 6—Section 1035 exchange (a tax-free exchange of life insurance, annuity, qualified long-term care insurance, or endowment contracts).
- 7—Normal distribution.
- 8—Excess contributions plus earnings/excess deferrals (and/or earnings) taxable in 2016.
- 9—Cost of current life insurance protection.
- A—May be eligible for 10-year tax option (see Form 4972).
- B—Designated Roth account distribution.

*(Continued on the back of Copy 2.)*

**EXHIBIT D**



Topics for Retirement Plans

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Retirement Topics - Exceptions to Tax on Early Distributions



Most retirement plan distributions are subject to income tax and may be subject to an additional 10% tax.

Generally, the amounts an individual withdraws from an IRA or retirement plan before reaching age 59½ are called "early" or "premature" distributions. Individuals must pay an additional 10% early withdrawal tax unless an exception applies.

The distribution will NOT be subject to the 10% additional early distribution tax in the following circumstances:	Exception to 10% Additional Tax		
	Qualified Plans (401(k), etc.)	IRA, SEP, SIMPLE IRA* and SARSEP Plans	Internal Revenue Code Section(s)
<b>Age</b>			
after participant/IRA owner reaches age 59½	yes	yes	72(t)(2)(A)(i)
<b>Automatic Enrollment</b>			
permissive withdrawals from a plan with auto enrollment features	yes	yes for SIMPLE IRAs and SARSEPs	414(w)(1)(B)
<b>Corrective Distributions</b>			
corrective distributions (and associated earnings) of excess contributions, excess aggregate contributions and excess deferrals, made timely	yes	n/a	401(k)(8)(D), 401(m)(7)(A), 402(g)(2)(C)
<b>Death</b>			
after death of the participant/IRA owner	yes	yes	72(t)(2)(A)(ii)
<b>Disability</b>			
total and permanent disability of the participant/IRA owner	yes	yes	72(t)(2)(A)(iii)
<b>Domestic Relations</b>			
to an alternate payee under a Qualified Domestic Relations Order	yes	n/a	72(t)(2)(C)
<b>Education</b>			
qualified higher education expenses	no	yes	72(t)(2)(E)
<b>Equal Payments</b>			
series of substantially equal payments	yes	yes	72(t)(2)(A)(iv)
<b>ESOP</b>			
dividend pass through from an ESOP	yes	n/a	72(t)(2)(A)(vi)
<b>Homebuyers</b>			
qualified first-time homebuyers, up to \$10,000	no	yes	72(t)(2)(F)
<b>Levy</b>			
because of an IRS levy of the plan	yes	yes	72(t)(2)(A)(vii)

<b>Medical</b>			
amount of unreimbursed medical expenses (>7.5% AGI; after 2012, 10% if under age 65)	yes	yes	72(t)(2)(B)
health insurance premiums paid while unemployed	no	yes	72(t)(2)(D)
<b>Military</b>			
certain distributions to qualified military reservists called to active duty	yes	yes	72(t)(2)(G)
<b>Returned IRA Contributions</b>			
if withdrawn by extended due date of return	n/a	yes	408(d)(4)
earnings on these returned contributions	n/a	no	408(d)(4)
<b>Rollovers</b>			
in-plan Roth rollovers or eligible distributions contributed to another retirement plan or IRA within 60 days (also see <a href="#">FAQs: Waivers of the 60-Day Rollover Requirement</a> )	yes	yes	402(c), 402A(d)(3), 403(a)(4), 403(b)(8), 408(d)(3), 408A(d)(3)
<b>Separation from Service</b>			
the employee separates from service during or after the year the employee reaches age 55 (age 50 for public safety employees of a state, or political subdivision of a state, in a governmental defined benefit plan)**	yes	no	72(t)(2)(A)(v), 72(t)(10)

**Nonqualified 457(b) plans:** Governmental 457(b) distributions are not subject to the 10% additional tax except for distributions attributable to rollovers from another type of plan or IRA.

\*SIMPLE IRA distributions incur a 25% additional tax instead of 10% if made within the first 2 years of participation

**\*\*Qualified public safety employees**

Effective for distributions after December 31, 2015, the exception for public safety employees who are age 50 or over is expanded to include specified federal law enforcement officers, customs and border protection officers, federal firefighters and air traffic controllers. Also, the restriction that only defined benefit plans qualify for the exemption is eliminated. Thus, an exemption is allowed for distributions from defined contribution plans or other types of governmental plans, such as the TSP. See [IRC Section 72\(t\)\(10\)](#), as amended by the Defending Public Safety Employees' Retirement Act, [P.L. 114-26](#).

**EXHIBIT E**

1040 or Form 1040NR. This applies if you meet an exception to the tax on early distributions but box 7 of your Form 1099-R does not indicate an exception.

## Tax on Early Distributions

Most distributions (both periodic and nonperiodic) from qualified retirement plans and nonqualified annuity contracts made to you before you reach age 59½ are subject to an additional tax of 10%. This tax applies to the part of the distribution that you must include in gross income. It does not apply to any part of a distribution that is tax free, such as amounts that represent a return of your cost or that were rolled over to another retirement plan. It also does not apply to corrective distributions of excess deferrals, excess contributions, or excess aggregate contributions (discussed earlier under *Taxation of Nonperiodic Payments*).

For this purpose, a qualified retirement plan is:

- A qualified employee plan (including a qualified cash or deferred arrangement (CODA) under Internal Revenue Code section 401(k)),
- A qualified employee annuity plan,
- A tax-sheltered annuity plan (403(b) plan), or
- An eligible state or local government section 457 deferred compensation plan (to the extent that any distribution is attributable to amounts the plan received in a direct transfer or rollover from one of the other plans listed here or an IRA).

**5% rate on certain early distributions from deferred annuity contracts.** If an early withdrawal from a deferred annuity is otherwise subject to the 10% additional tax, a 5% rate may apply instead. A 5% rate applies to distributions under a written election providing a specific schedule for the distribution of your interest in the contract if, as of March 1, 1986, you had begun receiving payments under the election. On line 4 of Form 5329, multiply the line 3 amount by 5% instead of 10%. Attach an explanation to your return.

**Distributions from designated Roth accounts allocable to in-plan Roth rollovers within the 5-year period.** If, within the 5-year period starting with the first day of your tax year in which you rolled over an amount from your 401(k), 403(b), or 457(b) plan to a designated Roth account, you take a distribution from the designated Roth account, you may have to pay the additional 10% tax on early distributions. You generally must pay the 10% additional tax on any amount attributable to the part of the in-plan Roth rollover that you had to include in income (recapture amount). A separate 5-year period applies to each in-plan Roth rollover. See *Figuring your recapture amount*, later, to determine the recapture amount, if any.

The 5-year period used for determining whether the 10% early distribution tax applies to a distribution allocable to an in-plan Roth rollover is separately determined for each in-plan Roth rollover, and is not necessarily the

same as the 5-year period used for determining whether a distribution is a qualified distribution.

**Figuring your recapture amount.** For any early distribution in 2015 from your designated Roth account that is allocable to an in-plan Roth rollover, you allocate the amount from your 2015 Form 1099-R, box 10, to the amounts, if any, you have rolled over into that designated Roth account.

If you have not taken a distribution from your designated Roth account before 2015, then allocate the amount in box 10 of your 2015 Form 1099-R to the amounts you reported on the lines listed in the *Recapture Allocation Chart* (filling in the Taxable column first, and then the Nontaxable column for each year) until you have covered the entire amount in box 10.

If you have taken a distribution from your designated Roth account prior to 2015, then allocate the amount in box 10 of your 2015 Form 1099-R to the amounts you reported on the lines listed in the *Recapture Allocation Chart* (filling in the Taxable column first, and then the Nontaxable column for each year). However, don't start at the beginning, instead begin with the first line that has not been used fully for a previous distribution.

Your recapture amount is the sum of the amounts you allocated for 2011 through 2015 under the Taxable column in the *Recapture Allocation Chart*. You will also include this amount on Form 5329, line 1.

**Example.** You had an in-plan Roth rollover in 2015 of \$50,000. This is your first in-plan Roth rollover. Your 2015 Form 1040 includes \$30,000 on line 16b, the taxable portion of the in-plan Roth rollover, and \$50,000 on line 16a, the in-plan Roth rollover including \$20,000 of basis.

In December of 2015, at age 57, you took a distribution of \$35,000 from your designated Roth account. The 2015 Form 1099-R shows the distribution of \$35,000 reported in box 1, the taxable portion of the distribution of \$3,500 reported in box 2a, and the amount of \$31,500 allocable to the in-plan Roth rollover reported in box 10. Since you had no in-plan Roth rollovers in prior years, you would allocate the \$31,500 reported in box 10 of Form 1099-R as shown in the *Example Recapture Allocation Chart*.

The recapture amount, the amount subject to tax on early distributions allocable to the in-plan Roth rollover, is \$30,000 (\$31,500 – \$1,500). Your amount subject to tax on early distributions reported on Form 5329, line 1, for this distribution is \$33,500 (\$30,000 allocable to Form 1040, line 16b, and \$3,500 from Form 1099-R, box 2a).

**Exceptions to tax.** Certain early distributions are excepted from the early distribution tax. If the payer knows that an exception applies to your early distribution, distribution code "2," "3," or "4" should be shown in box 7 of your Form 1099-R and you don't have to report the distribution on Form 5329. If an exception applies but distribution code "1" (early distribution, no known exception) is shown in box 7, you must file Form 5329. Enter the taxable amount of the distribution shown in box 2a of your Form 1099-R on line 1 of Form 5329. On line 2, enter the amount that can be excluded and the exception number shown in the Form 5329 instructions.