



STATE OF NEW MEXICO
Educational Retirement Board

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1099-R information for retirees under age 55

If you are a New Mexico Educational Retirement Board (NMERB) retiree who is under the age of 55, please note: NMERB is required to use the code “1” on your 1099-R. NMERB previously coded these 1099 R’s with a “2”.

As you prepare your taxes, your tax preparer or tax software may inform you that the code “1” on your 1099-R will subject you to a 10 percent penalty tax because you have retired before reaching the age of 55.

However, as a NMERB retiree you should be exempt from this 10 percent penalty tax because you are receiving the same amount of retirement benefit each month. This type of exemption is called a “substantially equal periodic payment” or “SEPP.”

NMERB retirees under the age of 55, may apply for an exemption, from this 10 percent early distribution penalty tax by completing and filing IRS form 5329 with the IRS. You may obtain this form from the IRS website: <https://www.irs.gov/pub/irs-pdf/f5329.pdf>.

You may also review the instructions for form 5329, which are available on the IRS website: <https://www.irs.gov/pub/irs-pdf/i5329.pdf>. Page 3 of the instructions, for form 5329, states: “[t]he additional tax on early distributions does not apply to the distributions described next.” See Figure 1, page 3 (highlighted below). Page 4 of the instructions, states that Exception 2 includes, “[d]istributions made as part of a series of substantially equal periodic payments ...” See Figure 1, page 4 (highlighted below.) NMERB retirees may apply for this exemption.

In order to do this, on line 2, of Form 5329, you can enter the total amount of benefits you received last year from NMERB as distributions “that are not subject to the additional tax.” See Figure 2, (highlighted on page 2). Where Form 5329 states: “Enter the appropriate exception number from the instructions:” you can enter the number “2” to indicate you fall under Exception 2 which is the exception for substantially equal periodic payments.

Please note that any COLA adjustments made during the year to your monthly benefit will not disqualify you from this tax exemption.

FIGURE 1—EXCERPTS FROM INSTRUCTIONS FOR FORM 5329

Line 1

Enter the amount of early distributions included in income that you received from:

- A qualified retirement plan, including earnings on withdrawn excess contributions to your IRAs included in income in 2016, or
- A modified endowment contract entered into after June 20, 1988.

Certain prohibited transactions involving your IRA, such as borrowing from your IRA or pledging your IRA assets as security for a loan, are considered to be distributions and are generally subject to the additional tax on early distributions. See *Prohibited Transactions* under *What Acts Result in Penalties or Additional Taxes?* in Pub. 590-B for details.

Distributions from a designated Roth account. If you received an early distribution from your designated Roth account, include on line 1 the amount of the distribution that you must include in your income. You will find this amount in box 2a of your 2016 Form 1099-R. You may also need to include a recapture amount on line 1 if you have ever made an in-plan Roth rollover (discussed later).

TIP *If you never made an in-plan Roth rollover, you need to include on line 1 of this form only the amount from box 2a of your 2016 Form 1099-R reporting the early distribution.*

Recapture amount subject to the additional tax on early distributions. If you have ever made an in-plan Roth rollover and you received an early distribution for 2016, the recapture amount to include on line 1 is a portion of the amounts you rolled over.

The recapture amount that you must include on line 1 will not exceed the amount of your early distribution; and, for purposes of determining this recapture amount, you will allocate a rollover amount (or portion thereof) to an early distribution only once.

For more information about the recapture amount for early distributions from a designated Roth account, including how to calculate it, see *Tax on Early Distributions* under *Special Additional Taxes* in Pub. 575.

Distributions from Roth IRAs. If you received an early distribution from your Roth IRAs, include on line 1 the part of the distribution that you must include in your income. You will find this amount on line 25 of your 2016 Form 8606. You

will also need to include on line 1 the following amounts.

- A qualified first-time homebuyer distribution from line 20 of your 2016 Form 8606. Also include this amount on line 2 and enter exception number 09.
- Recapture amounts attributable to any conversions or rollovers to your Roth IRAs in 2012 through 2016. See [Recapture amount subject to the additional tax on early distributions](#) next.

TIP *If you did not have a qualified first-time homebuyer distribution in 2016, and you did not convert or roll over an amount to your Roth IRAs in 2012 through 2016, you only need to include the amount from line 25 of your 2016 Form 8606 on line 1 of this form.*

Recapture amount subject to the additional tax on early distributions. If you converted or rolled over an amount to your Roth IRAs in 2012 through 2016 and you received an early distribution for 2016, the recapture amount you must include on line 1 is the amount, if any, of the early distribution allocated to the taxable portion of your 2012 through 2016 conversions or rollovers.

Generally, an early distribution is allocated to your Roth IRA contributions first, then to your conversions and rollovers on a first-in, first-out basis. For each conversion or rollover, you must first allocate the early distribution to the portion that was subject to tax in the year of the conversion or rollover, and then to the portion that was not subject to tax. The recapture amount is the sum of the early distribution amounts that you allocate to these taxable portions of your conversions or rollovers.

The recapture amount that you must include on line 1 will not exceed the amount of your early distribution; and, for purposes of determining this recapture amount, you will allocate a contribution, conversion, or rollover amount (or portion thereof) to an early distribution only once.

For more information about the recapture amount for distributions from a Roth IRA, including how to calculate it, see *Ordering Rules for Distributions* under *Are Distributions Taxable?* in chapter 2 of Pub. 590-B. Also, see [Example](#) next, which illustrates a situation where a taxpayer must include a recapture amount on line 1.

Example. You converted \$20,000 from a traditional IRA to a Roth IRA in 2012 and converted \$10,000 in 2013. Your 2012 Form 8606 had \$5,000 on line 17 and \$15,000 on line 18 and your

2013 Form 8606 had \$3,000 on line 17 and \$7,000 on line 18. You made Roth IRA contributions of \$2,000 for 2012 and 2013. You did not make any Roth IRA conversions or contributions for 2014 through 2016, or take any Roth IRA distributions before 2016.

On July 9, 2016, at age 53, you took a \$33,000 distribution from your Roth IRA. Your 2016 Form 8606 shows \$33,000 on line 19; \$29,000 on line 23 (\$33,000 minus \$4,000 for your contributions on line 22) and \$0 on line 25 (\$29,000 minus your basis in conversions of \$30,000).

First, \$4,000 of the \$33,000 is allocated to your 2016 Form 8606, line 22; then \$15,000 to your 2012 Form 8606, line 18; \$5,000 to your 2012 Form 8606, line 17; and \$7,000 to your 2013 Form 8606, line 18. The remaining \$2,000 is allocated to the \$3,000 on your 2013 Form 8606, line 17. On line 1, enter \$22,000 (\$15,000 allocated to your 2012 Form 8606, line 18, plus the \$7,000 that was allocated to your 2013 Form 8606, line 18).

If you take a Roth IRA distribution in 2017, the first \$1,000 will be allocated to the \$1,000 remaining from your 2013 Form 8606, line 17, and will not be subject to the additional tax on early distributions.

Additional information. For more details, see *Are Distributions Taxable?* in chapters 1 and 2 of Pub. 590-B.

Line 2

The additional tax on early distributions does not apply to the distributions described next. Enter on line 2 the amount that you can exclude. In the space provided, enter the applicable exception number (01–12). If more than one exception applies, enter 12.

No. Exception

- 01** Qualified retirement plan distributions (does not apply to IRAs) you receive after separation from service when the separation from service occurs in or after the year you reach age 55 (age 50 for qualified public safety employees).
- 02** Distributions made as part of a series of substantially equal periodic payments (made at least annually) for your life (or life expectancy) or the joint lives (or joint life expectancies) of you and your designated beneficiary (if from an employer plan, payments must begin after separation from service).
- 03** Distributions due to total and permanent disability. You are considered disabled if you can furnish proof that you cannot do any substantial gainful activity because of your physical or mental condition. A medical determination that your condition can be expected to result in death or to be of long, continued, and indefinite duration must be made.
- 04** Distributions due to death (does not apply to modified endowment contracts).
- 05** Qualified retirement plan distributions up to the amount you paid for unreimbursed medical expenses during the year **minus** 10% (or 7.5% if you or your spouse were born before January 2, 1952) of your adjusted gross income (AGI) for the year.
- 06** Qualified retirement plan distributions made to an alternate payee under a qualified domestic relations order (does not apply to IRAs).
- 07** IRA distributions made to certain unemployed individuals for health insurance premiums.
- 08** IRA distributions made for qualified higher education expenses.
- 09** IRA distributions made for the purchase of a first home, up to \$10,000.
- 10** Qualified retirement plan distributions made due to an IRS levy.
- 11** Qualified distributions to reservists while serving on active duty for at least 180 days.
- 12** Other (see [Other](#) next). Also, enter this code if more than one exception applies.
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Other. The following exceptions also apply.

- Distributions incorrectly indicated as early distributions by code 1, J, or S in box 7 of Form 1099-R. Include on line 2 the amount you received when you were age 59½ or older.
- Distributions from a section 457 plan, which are not from a rollover from a qualified retirement plan.
- Distributions from a plan maintained by an employer if:

1. You separated from service by March 1, 1986;

2. As of March 1, 1986, your entire interest was in pay status under a written election that provides a specific schedule for the distribution of your entire interest; and

3. The distribution is actually being made under the written election.

- Distributions that are dividends paid with respect to stock described in section 404(k).
- Distributions from annuity contracts to the extent that the distributions are allocable to the investment in the contract before August 14, 1982. For additional exceptions that apply to annuities, see *Tax on Early Distributions under Special Additional Taxes* in Pub. 575.
- Distributions that are phased retirement annuity payments made to federal employees. See Pub. 721 for more information on the phased retirement program.

Line 4

If any amount on line 3 was a distribution from a SIMPLE IRA received within 2 years from the date you first participated in the SIMPLE IRA plan, you must multiply that amount by 25% instead of 10%. These distributions are included in boxes 1 and 2a of Form 1099-R and are designated with code S in box 7.

Part II—Additional Tax on Certain Distributions From Education Accounts and ABLER Accounts**Line 5**

Distributions from an ABLE account are not included in income if made on or after the death of the designated beneficiary:

- to the estate of the designated beneficiary,
- to an heir or legatee of the designated beneficiary, or

- to pay outstanding obligations due for qualified disability expenses of the designated beneficiary, including a claim filed by a State under a State Medicaid plan.

Line 6

The additional tax does not apply to the distributions that are includible in income described next. Enter on line 6 the amount from line 5 that you can exclude.

- Distributions made due to the death or disability of the beneficiary.
- Distributions from an education account made on account of a tax-free scholarship, allowance, or payment described in section 25A(g)(2).
- Distributions from an education account made because of attendance by the beneficiary at a U.S. military academy. This exception applies only to the extent that the distribution does not exceed the costs of advanced education (as defined in title 10 of the U.S. Code) at the academy.
- Distributions from an education account included in income because you used the qualified education expenses to figure the American opportunity and lifetime learning credits.

Part III—Additional Tax on Excess Contributions to Traditional IRAs

If you contributed more for 2016 than is allowable or you had an amount on line 17 of your 2015 Form 5329, you may owe this tax. But you may be able to avoid the tax on any 2016 excess contributions (see the instructions for [line 15](#), later).

Line 9

Enter the amount from line 16 of your 2015 Form 5329 only if the amount on line 17 of your 2015 Form 5329 is more than zero.

Line 10

Enter the difference, if any, of your contribution limit for traditional IRAs less your contributions to traditional IRAs and Roth IRAs for 2016.

If you are not married filing jointly, your contribution limit for traditional IRAs is the smaller of your taxable [compensation](#) (defined earlier) or \$5,500 (\$6,500 if age 50 or older at the end of 2016). If you are married filing jointly, your contribution limit is generally \$5,500 (\$6,500 if age 50 or older at the end of 2016) and your spouse's contribution limit is \$5,500 (\$6,500 if age 50 or older at the end of 2016). But if the combined taxable compensation

FIGURE 2—FORM 5329

Form 5329 Department of the Treasury Internal Revenue Service (99)	Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts ▶ Attach to Form 1040 or Form 1040NR. ▶ Information about Form 5329 and its separate instructions is at www.irs.gov/form5329 .	OMB No. 1545-0074 2016 Attachment Sequence No. 29
Name of individual subject to additional tax. If married filing jointly, see instructions.		Your social security number
Fill in Your Address Only If You Are Filing This Form by Itself and Not With Your Tax Return	Home address (number and street), or P.O. box if mail is not delivered to your home	
	City, town or post office, state, and ZIP code. If you have a foreign address, also complete the spaces below (see instructions).	
	Foreign country name	Foreign province/state/county
		Foreign postal code
If this is an amended return, check here <input type="checkbox"/>		
If you only owe the additional 10% tax on early distributions, you may be able to report this tax directly on Form 1040, line 59, or Form 1040NR, line 57, without filing Form 5329. See the instructions for Form 1040, line 59, or for Form 1040NR, line 57.		
Part I Additional Tax on Early Distributions. Complete this part if you took a taxable distribution before you reached age 59½ from a qualified retirement plan (including an IRA) or modified endowment contract (unless you are reporting this tax directly on Form 1040 or Form 1040NR—see above). You may also have to complete this part to indicate that you qualify for an exception to the additional tax on early distributions or for certain Roth IRA distributions (see instructions).		
1	Early distributions included in income. For Roth IRA distributions, see instructions	1
2	Early distributions included on line 1 that are not subject to the additional tax (see instructions). Enter the appropriate exception number from the instructions: 2 0	2
3	Amount subject to additional tax. Subtract line 2 from line 1	3
4	Additional tax. Enter 10% (0.10) of line 3. Include this amount on Form 1040, line 59, or Form 1040NR, line 57 Caution: If any part of the amount on line 3 was a distribution from a SIMPLE IRA, you may have to include 25% of that amount on line 4 instead of 10% (see instructions).	4
Part II Additional Tax on Certain Distributions From Education Accounts and ABLÉ Accounts. Complete this part if you included an amount in income, on Form 1040 or Form 1040NR, line 21, from a Coverdell education savings account (ESA), a qualified tuition program (QTP), or an ABLÉ account.		
5	Distributions included in income from a Coverdell ESA, a QTP, or an ABLÉ account	5
6	Distributions included on line 5 that are not subject to the additional tax (see instructions)	6
7	Amount subject to additional tax. Subtract line 6 from line 5	7
8	Additional tax. Enter 10% (0.10) of line 7. Include this amount on Form 1040, line 59, or Form 1040NR, line 57	8
Part III Additional Tax on Excess Contributions to Traditional IRAs. Complete this part if you contributed more to your traditional IRAs for 2016 than is allowable or you had an amount on line 17 of your 2015 Form 5329.		
9	Enter your excess contributions from line 16 of your 2015 Form 5329 (see instructions). If zero, go to line 15	9
10	If your traditional IRA contributions for 2016 are less than your maximum allowable contribution, see instructions. Otherwise, enter -0-	10
11	2016 traditional IRA distributions included in income (see instructions)	11
12	2016 distributions of prior year excess contributions (see instructions)	12
13	Add lines 10, 11, and 12	13
14	Prior year excess contributions. Subtract line 13 from line 9. If zero or less, enter -0-	14
15	Excess contributions for 2016 (see instructions)	15
16	Total excess contributions. Add lines 14 and 15	16
17	Additional tax. Enter 6% (0.06) of the smaller of line 16 or the value of your traditional IRAs on December 31, 2016 (including 2016 contributions made in 2017). Include this amount on Form 1040, line 59, or Form 1040NR, line 57	17
Part IV Additional Tax on Excess Contributions to Roth IRAs. Complete this part if you contributed more to your Roth IRAs for 2016 than is allowable or you had an amount on line 25 of your 2015 Form 5329.		
18	Enter your excess contributions from line 24 of your 2015 Form 5329 (see instructions). If zero, go to line 23	18
19	If your Roth IRA contributions for 2016 are less than your maximum allowable contribution, see instructions. Otherwise, enter -0-	19
20	2016 distributions from your Roth IRAs (see instructions)	20
21	Add lines 19 and 20	21
22	Prior year excess contributions. Subtract line 21 from line 18. If zero or less, enter -0-	22
23	Excess contributions for 2016 (see instructions)	23
24	Total excess contributions. Add lines 22 and 23	24
25	Additional tax. Enter 6% (0.06) of the smaller of line 24 or the value of your Roth IRAs on December 31, 2016 (including 2016 contributions made in 2017). Include this amount on Form 1040, line 59, or Form 1040NR, line 57	25
For Privacy Act and Paperwork Reduction Act Notice, see your tax return instructions.		
Cat. No. 13329G		Form 5329 (2016)