

Program Letter

United States
Railroad Retirement Board
Office of Programs



Quality Reporting Service Center

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Letter No. 2019-02

Date: January 15, 2019
[Revised: April 10, 2019]

TO: **Certification Contact Officials**

SUBJECT: **Changes in Creditable Compensation for Nonstatutory Stock Options
Effective for Compensation Reports for Calendar Year 2018**

The purpose of this program letter is to notify employers of a recent decision by the Supreme Court of the United States (SCOTUS) which affects the status of nonstatutory stock options as taxable compensation under the Railroad Retirement Tax Act (RRTA). The decision did not specifically address the status of such options under the Railroad Retirement Act (RRA) and Railroad Unemployment Insurance Act (RUIA). The Board has previously held that it will interpret creditable compensation under the RRA and RUIA similarly to interpretations of taxability under the RRTA. However, in January of 2019, three new Board members took office and they have not yet made a decision on this issue. Consequently, these interim instructions are issued with the proviso that they are subject to change should the Board in the future decide not to follow prior procedure.

Please share this information with the appropriate members of your staff who file service and compensation reporting forms for employees of your organization.

General

In the case *Wisconsin Central Ltd. v. United States*, 138 S. Ct. 2067 (2018), the court ruled in a 5 to 4 decision that nonstatutory stock options granted to employees are not taxable “money remuneration” under Section 3231(e)(1) of the RRTA.

The Supreme Court held in *Wisconsin Central* that amounts are taxable compensation under the RRTA only if they are in the form of “currency issued by a recognized authority as a medium of exchange.” Both prior to and after this decision, statutory stock options—that is, those options granted under an employee stock purchase plan or an incentive stock option (ISO) plan—were and are not considered taxable compensation under the RRTA or creditable compensation under the RRA and RUIA. However, in light of the *Wisconsin Central* decision, nonstatutory stock

options—that is, stock options that are granted neither under an employee stock purchase plan nor an ISO plan—are not considered taxable compensation under the RRTA or creditable compensation under the RRA and RUIA, either. Whether other forms of equity-based compensation are subject to the RRTA in light of *Wisconsin Central* depends on whether the particular payment that an employee receives is “currency issued by a recognized authority as a medium of exchange.”

Effect of Ruling

Since nonstatutory stock options are no longer considered taxable compensation under the RRTA, interim instructions for reporting purposes are that they are also no longer considered creditable compensation under the RRA and RUIA. **Therefore, effective for compensation reports for calendar year 2018, employers are no longer required to report nonstatutory stock options exercised by employees as creditable compensation. However, employers should retain this information in their records as such information is still needed by the Railroad Retirement Board. Procedures are being developed for employers on how to report nonstatutory stock options to the RRB separate from regular compensation reports. Those details will be provided in a separate transmittal.**

Questions

If you have questions concerning creditable compensation under the RRA or RUIA, please contact the Quality Reporting Service Center at the email or telephone number shown above. If you have questions about taxable compensation, please contact the Internal Revenue Service, as they administer the RRTA.

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