

# Program Letter

United States  
Railroad Retirement Board  
Office of Programs



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Quality Reporting Service Center

Phone: (312) 751-4992

Email: [QRSC@rrb.gov](mailto:QRSC@rrb.gov)

Fax: (312) 751-7123

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Letter No. 2019-02

Date: January 15, 2019

TO: **Certification Contact Officials**

SUBJECT: **Changes in Creditable Compensation for Non-Qualified Stock Options –  
Effective for Compensation Reports for Calendar Year 2018**

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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 non-qualified 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, as the Board does not at present have a quorum for making determinative decisions on this issue, these interim instructions are issued with the proviso that they are subject to modification 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.**

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## 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 non-qualified stock options granted to employees are not taxable “money remuneration” under Section 3231(e)(1) of the RRTA.

Stock options granted to employees under qualified purchase plans were not in the past, nor in the present, considered taxable compensation under the RRTA or creditable compensation under the RRA and RUIA. However, prior to the court’s ruling, a grant of an option to purchase stock made by an employee under a non-qualified purchase plan was considered creditable and taxable compensation to the extent that the option had a readily ascertainable fair market value.

## Effect of Ruling

Since non-qualified 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 non-qualified stock options granted to 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 for making appropriate reports to the RRB of this non-qualified stock option compensation separate from compensation reports are under development. Details will be provided in a separate transmittal.**

Section 9 of the Railroad Retirement Act (RRA) provides that the RRB's records of service and compensation are conclusive as to the amount of compensation paid during the period covered by the report, unless an error is called to the RRB's attention within four years of the day on which the report was required to be made. Employers may initiate an adjustment report to correct an error the employer has discovered or the RRB may request an adjustment report to correct an error the RRB has identified.

Based on the four-year statute of limitations, if you filed a Form BA-3, *Annual Report of Creditable Compensation* or a Form BA-4, *Report of Creditable Compensation Adjustments* from 2014 through 2017 that included non-qualified stock option compensation, employers would under past procedure be expected to file a new Form BA-4 to remove that compensation from your employees' records. However, at this point in time, employers are asked to retain the appropriate information but refrain from filing a Form BA-4 report. A future notice will address the filing of Form BA-4 reports.

## 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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