

Sex-Change Surgery Deductible Medical Expense

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In a case of first impression, the Tax Court ruled that the costs of hormone therapy and sex reassignment surgery for an individual diagnosed with gender identity disorder (GID) qualified as deductible medical expenses. However, the court also said the cost of breast augmentation surgery was cosmetic surgery and not deductible.

Robert Donovan, born anatomically male, began to experience discomfort with his gender during childhood and began to secretly wear women's clothing at age 10. This discomfort persisted through his adulthood, marriage and fatherhood. In 1997, Donovan's psychotherapist diagnosed him with severe GID. Donovan underwent a three-part treatment plan recommended by a professional association's treatment guidelines for individuals with severe GID, including (1) hormonal therapy; (2) a trial period of presenting himself publicly as a woman; and (3) "sex reassignment" surgery, including breast augmentation. In 2000, Donovan legally changed his name to Rhiannon G. O'Donnabhain. On her 2001 tax return, O'Donnabhain claimed a medical expense deduction under IRC § 213 for \$21,741, including \$14,495 for the genital sex reassignment surgery; \$4,500 for the breast augmentation; and \$382 for the hormonal therapy. The IRS disallowed the deduction, and O'Donnabhain sought relief in the Tax Court.

The IRS challenged the classification of GID as a disease, arguing that it is not a significant psychiatric disorder because it "did not arise from a pathological process," but instead is a "social construction" that has been "medicalized." The IRS also challenged whether O'Donnabhain's condition was properly diagnosed. In addition, the IRS disputed whether the procedures treated a disease, since, it said, there was no scientific proof of their efficacy. It also said sex reassignment surgery was cosmetic surgery, for which IRC § 213(d)(9) denies a deduction unless necessary to address a congenital abnormality or its results, or injury or disfigurement caused by a disease, accident or trauma.

The court rejected the IRS' arguments, holding that GID is a well-recognized mental disorder that satisfies the definition of a disease for which, in severe cases, sex reassignment surgery is an appropriate and effective treatment. The court noted that GID is included in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (DSM). The court was likewise persuaded that O'Donnabhain was properly diagnosed. The court relied heavily on the credibility of the health care professional who treated O'Donnabhain and expert witnesses who testified on her behalf. It also noted well-recognized medical references and the "Benjamin standards" that have been developed for treatment in such cases, calling them "widely accepted standards of care" in the psychiatric profession.

The court allowed a deduction for the genital sex reassignment surgery and the hormonal therapy but disallowed a deduction for the breast augmentation, on the basis that it was cosmetic surgery undertaken "merely to improve appearance."

The case yielded five minority opinions—one concurring, two concurring with the result but not all its reasoning, and two (written or agreed to by five of the 15 judges) dissenting from the majority's holding of deductibility for genital sex reassignment surgery. This case demonstrates how the interpretation of the term "disease" is evolving. For example, posttraumatic stress disorder, which some war veterans suffer from, was not included in the DSM until 1980. In 2002, the IRS acknowledged in Revenue Ruling 2002-19 that "obesity is medically accepted to be a disease" and began to allow taxpayers to take a medical expense deduction for participation in a weight-loss program if prescribed by a doctor.

■ *O'Donnabhain v. Commissioner*, 134 TC no. 4

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