

ACTION ON DECISION

IRB No. 2011-47
November 21, 2011

Subject: O'Donnabhain v. Commissioner,
134 T.C. 34 (2010)
T.C. Docket No. 6402-06

Issue: Whether hormone therapy and sex reassignment surgery constitute medical care within the meaning of §§ 213(d)(1)(A) and (9)(B).

Discussion: Section 213 of the Internal Revenue Code allows a deduction for the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer. Medical care, as defined in § 213(d)(1)(A), includes amounts paid for the treatment of disease. Section 213(d)(9)(B) excludes from the definition of medical care any procedure that is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease.

Ms. O'Donnabhain paid expenses for hormone therapy and sex reassignment surgery to treat her gender identity disorder disease and deducted the costs of the treatment as medical expenses. The IRS disallowed her deduction based on the view that hormone therapy and sex reassignment surgery did not treat a medically recognized disease or promote the proper function of the body. See CCA 200603025. Ms. O'Donnabhain petitioned the Tax Court to reverse the IRS administrative determination and allow her deduction for the expenses of hormone therapy and sex reassignment surgery.

The Tax Court agreed with Ms. O'Donnabhain that her gender identity disorder is a disease within the meaning of §§ 213(d)(1)(A) and (9)(B). The court cited four bases for its conclusion: 1) the disorder is widely recognized in diagnostic and psychiatric reference texts; 2) the texts and all three experts testifying in the case consider the disorder a serious medical condition; 3) the mental health professionals who examined Ms. O'Donnabhain found that her disorder was a severe impairment; and, 4) the Courts of Appeal generally consider gender identity disorder a serious medical condition. The court held that because hormone therapy and sex reassignment surgery treat the taxpayer's disease they are medical care, and the expenses for that medical care are deductible under § 213.

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The Tax Court rejected the IRS administrative position reflected in CCA 200603025. The Service will follow the O'Donnabhain decision. The Service will no longer take the position reflected in CCA 200603025.

Recommendation: Acquiescence

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