

UNITED STATES TAX COURT

_____)	
RHIANNON G. O'DONNABHAIN,)	
Petitioner,)	
)	
v.)	DOCKET NO. _____
)	
COMMISSIONER OF INTERNAL)	
REVENUE,)	
Respondent.)	
_____)	

PETITION

The Petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (AP:FE:BOS:JHK) dated January 4, 2006, and as the basis for her case alleges as follows:

1. The Petitioner, Rhiannon G. O'Donnabhain ("Ms. O'Donnabhain") is an individual whose mailing address and legal residence is presently _____. Ms. O'Donnabhain's social security number is ____-__-____. The return for the period here involved was filed with the Internal Revenue Service Center at Andover, Massachusetts on, or about, April 15, 2001.
2. The notice of deficiency, a copy of which, including its annexed computation and explanation pages, is attached hereto as Exhibit A, was mailed to Ms.

O'Donnabhain on January 4, 2006 by the Appeals Office of the Internal Revenue Service at Boston, Massachusetts.

3. The deficiency as determined by the Commissioner is in income tax for the calendar year 2001 in the amount of \$5,679.00, of which the entire amount attributable to the denial of medical expense deductions, representing tax of \$5,115.00, is in dispute.

4. The Commissioner's determination of the income tax set forth in the notice of deficiency is based on errors of law, including, but not limited to, the following:

(a) The Commissioner erroneously determined that expenses incurred in connection with Ms.

O'Donnabhain's sex reassignment surgery do not qualify as deductible medical expenses under Section 213 of the Internal Revenue Code (the "Code"), despite the fact that such surgery was medically necessary and directed toward the cure, mitigation and treatment of Ms. O'Donnabhain's diagnosed gender identity disorder ("GID").

(b) The Commissioner erroneously determined that Ms. O'Donnabhain's sex reassignment surgery was "cosmetic surgery" within the meaning of Code Section 213(d)(9).

5. The facts on which Ms. O'Donnabhain relies, as the basis for her case, are as follows:

(a) In 1996, Ms. O'Donnabhain's therapist diagnosed her with GID, finding that the Petitioner met the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV), and as a transsexual, in accordance with the criteria for transsexualism in the International Classification of Diseases - 10.

(b) These diagnoses recognized that Ms. O'Donnabhain grew up with a medical condition in which her self-identification as female did not align with her male anatomical sex.

(c) Since childhood, Ms. O'Donnabhain had experienced extreme discomfort with her anatomical sex and felt a deep sense of inappropriateness in the gender role of that sex. She had feelings that something was not right in her body from as early as six or seven years old, but wasn't able to put a label on the feelings. By her early teens, Ms. O'Donnabhain was aware of strong feelings of wishing she were female and of a potent desire not to have the male genitalia that she had.

(d) As Ms. O'Donnabhain grew older, these feelings of conflict with her body intensified, resulting in regular, severe emotional pain. She thought that dating, marriage and having children would make the feelings go away, but they did not. The emotional turmoil increased to such an extent that by 1996, Ms. O'Donnabhain felt like her life was unraveling.

(e) Because the discordance between anatomical birth sex and gender identity causes significant psychological distress, the medical community has developed clear standards of care for the treatment of GID. These standards are known as the Harry Benjamin International Gender Dysphoria Association's Standards of Care for Gender Identity Disorder, Sixth Version (the "Harry Benjamin Standards").

(f) The Harry Benjamin Standards provide for an individualized assessment of medically necessary treatment for GID. The components of treatment may include the administration of hormone therapy, the "real-life experience" (the act of fully adopting a new gender role and presentation in every day life), and surgery.

(g) The goal of treatment, according to the Harry Benjamin Standards, is "lasting personal comfort with the gendered self in order to maximize overall psychological well-being and self-fulfillment."

(h) In accordance with her psychotherapist's diagnosis, and in order to effectuate her transition into the female gender, Ms. O'Donnabhain began taking feminizing hormones in September 1997 under the treatment of an endocrinologist.

(i) In March, 2000, Ms. O'Donnabhain completed a legal name change as part of her medically prescribed treatment to live in accordance with her female gender identity.

(j) In July 2000, Ms. O'Donnabhain changed the name and sex on her driver's license, and announced her transition to her co-workers. She began presenting as female full-time in her workplace, where she served as a project manager in the construction field.

(k) In July, 2001, Ms. O'Donnabhain's psychotherapist found that Ms. O'Donnabhain had met the strict pre-surgery criteria of the Harry Benjamin Standards, having undergone twelve months of hormone therapy, twelve months of continuous "real life"

experience as a woman, and psychotherapy throughout the "real life" experience.

(l) Having concluded that she had satisfied the pre-surgery criteria, Ms. O'Donnabhain's psychotherapist recommended her for sex reassignment surgery, finding that this surgery was a medically indicated and medically necessary treatment for her GID, and referred her for a second comprehensive evaluation by another mental health professional.

(m) On July 26, 2001, a psychologist evaluated Ms. O'Donnabhain and concluded that sex reassignment surgery was the medically appropriate course of treatment for her GID.

(n) Both Ms. O'Donnabhain's psychotherapist and psychologist found that she had made the social, familial, legal, therapeutic, and employment transitions preliminary to sex reassignment surgery, as set forth in the Harry Benjamin Standards, including having explored the implications of sex reassignment with her three grown children, in her workplace, and through therapy.

(o) With two mental health professionals having undertaken a comprehensive evaluation of Ms. O'Donnabhain, and confirming that she met the Harry

Benjamin Standards' pre-surgery eligibility and readiness criteria, Ms. O'Donnabhain's surgeon concurred that sex reassignment surgery was the medically necessary treatment for her GID.

(p) Ms. O'Donnabhain underwent sex reassignment surgery in October, 2001.

(q) Ms. O'Donnabhain's sex reassignment surgery was medically necessary and directed toward the cure, mitigation and treatment of her GID.

(r) Following her sex reassignment surgery, Ms. O'Donnabhain finally has a sense of comfort with her body. Feelings of conflict and pain have disappeared as she has succeeded in integrating her physical, mental, and emotional selves.

(s) Ms. O'Donnabhain is not sure that she could have continued living without the relief she finally attained through sex reassignment surgery.

(t) Given that her sex reassignment surgery was part of a medically prescribed course of treatment for her GID, Ms. O'Donnabhain claimed all expenses relating to the surgery as deductible medical expenses on her 2001 income tax return.

WHEREFORE, the Petitioner prays that this Court:

1. Determine that Ms. O'Donnabhain correctly reported her expenses incurred in connection with her sex reassignment surgery as deductible medical expenses under Code Section 213;

2. Determine that the Commissioner erred in denying medical expense deductions for expenses incurred in connection with Ms. O'Donnabhain's sex reassignment surgery;

3. Find that there is no deficiency in federal income tax resulting from a denial of medical expense deductions for expenses incurred in connection with Ms. O'Donnabhain's sex reassignment surgery; and

4. Give such other and further relief or recovery to which Ms. O'Donnabhain may be entitled.

Respectfully submitted,

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Date of Signature: March 31, 2006