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WIN IN *O'DONNABHAIN* TAX COURT CASE: GID QUALIFIES AS MEDICAL CARE

(Updated January 2012)

GLAD has great news for transgender people who can benefit from claiming a medical deduction for the treatment of GID. On February 2, 2010, the U.S. Tax Court issued a ruling in *O'Donnabhain v. Commissioner of Internal Revenue* that treatment for gender identity disorder (GID) qualifies as medical care under Section 213 of the Internal Revenue Code, and, therefore, provided there is adequate medical documentation, related expenses (e.g. hormones, surgery, therapy and other expenses related to the treatment of GID that satisfy the requirements of Section 213 of the Internal Revenue Code) may qualify as a medical deduction for federal income tax purposes. (To see the decision go to: <http://www.ustaxcourt.gov/InOpHistoric/ODonnabhain.TC.WPD.pdf>). On November 9, 2010 the final judgment was entered by the Tax Court and on February 7, 2011 we learned that this decision would not be appealed by the government, and on November 21, 2011 the IRS issued an advisory making clear that it will fully comply with the *O'Donnabhain* decision (see http://www.kiplinger.com/members/links/ktl/111110/ODonnabhain_AOD.pdf.)

This is a very strong decision, recognizing the legitimacy of GID as a medical condition and, therefore, that expenses related to the treatment of GID may be deductible. If you have had treatment for GID and are trying to decide whether you should claim related expenses as a medical deduction on your federal income tax, here is some information that may help you to decide. We are, however, not able to provide specific legal advice, so we strongly recommend that you take this information to a tax expert—a CPA or tax attorney—who can assist you in making your decision.

The win in the *O'Donnabhain* case adds treatment of GID to the list of medical expenses eligible for deduction under Section 213 of the Internal Revenue Code. However, our win does not guarantee that every medical deduction for the treatment of GID will be allowed by the IRS. Medical deductions can always be audited and require that you have strong documentation from your care providers that the treatment is medically appropriate. In the *O'Donnabhain* decision, the judges relied heavily on the *WPATH Standards of Care* in determining whether specific treatments were appropriate.

In our case, although most of the medical treatment Rhiannon O'Donnabhain received for GID was allowed, her breast surgery was not. The Court felt that she had obtained "normal" breasts through hormone treatment and concluded that there was insufficient documentation by the doctors that this procedure was needed for the treatment of Rhiannon's GID. However, this does not preclude you from claiming breast surgery as a medical deduction for the treatment of your GID. The bottom line is to make sure that you have the strongest medical documentation possible for each part of the treatment for which you are claiming a medical deduction. If you are audited and your medical deduction is denied, you can pursue the same course Rhiannon did—file an appeal, and, if you lose the appeal, file in tax court.

With regard to medical expenses for the treatment of GID incurred in previous tax years, the IRS allows you to file an amended return for up to three years from the date of your original filing. This means that if you filed your 2007 taxes on or before April 15, 2008, you must file an amended return by April 15, 2011. Unfortunately, it is not possible to file an amended return after that three year period has ended.

In addition, expenses for the treatment of GID may be permitted in other situations where Section 213 of the Internal Revenue Code is used to determine allowable medical expenses, e.g. consumer-directed health plans, such as FSAs, HSAs, MSAs and HRAs.

In every case, GLAD strongly recommends that you consult with a tax professional about the best course of action and that you have sufficient medical documentation for any expense that you are claiming.

If you have any questions about this, please **contact GLAD Answers by email or live chat at www.GLADAnswers.org or by phone at (800) 455-GLAD (4523)**. If you live in any of the six New England states, GLAD can also provide you with referrals to tax attorneys.