

Legal Division Guidance 2011-03-01

(Federal Conformity – IRC section 213 – "Gender Reassignment Surgery Expenses")

Q: Does California law conform to the recent federal decision allowing a medical expense deduction for gender reassignment surgery and hormone therapy?

A: In a recent case of first impression, O'Donnabhain v. Commissioner, the United States Tax Court determined that the taxpayer was entitled to a deduction under Internal Revenue Code (IRC) section 213 (medical, dental, etc., expenses) for the cost of gender reassignment surgery and hormone therapy. (134 T.C. No. 4 [Feb. 2, 2010].) In this case, the Tax Court determined that gender identity disorder was a disease, that the taxpayer was diagnosed with this disease, and that a "reasonable belief" in the efficacy of the procedure was all that was required for a deduction under IRC section 213. The taxpayer was able to show that the hormone therapy and gender reassignment therapy were for the treatment of a disease and qualified as medical care under IRC section 213(d)(9)(A). The Court ruled, however, that the breast augmentation surgery that the taxpayer sought to write off was "directed at improving [her] appearance" and that the taxpayer had not shown that the surgery either "meaningfully [promoted] the proper function of the body" or "treated the disease."

The Tax Court's opinion is now final.

Pursuant to Revenue and Taxation Code section 17201, unless otherwise provided, California generally conforms to federal deductions from income allowed under IRC sections 161-222 and 261-280H. California follows the federal treatment of medical expenses under IRC section 213. Therefore, to the extent that the circumstances are the same, California would follow the federal deduction for such expenses.