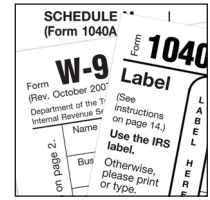




# FEDERAL TAXES AND TRANSGENDER PEOPLE

Frequently Asked Questions • January 2012



*Nothing in this document should be taken as legal or tax advice. We strongly suggest that you consult a tax preparer or attorney, if you can. At a minimum, we recommend carefully reading all relevant IRS tax forms and instructions, as well as relevant publications on the IRS website, especially Publication 502: Medical and Dental Expenses.*

## **IS TRANSITION RELATED MEDICAL CARE TAX-DEDUCTIBLE?**

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Yes. On November 21, 2011, the Internal Revenue Service (IRS) affirmed that transgender people can deduct the costs of hormone therapy and sex reassignment surgery from their gross income as medical expenses for the treatment of gender identity disorder (GID). This announcement indicates that the IRS will follow the United States Tax Court's 2010 decision in *O'Donnabhain v. Commissioner of Internal Revenue* that a transgender woman's medical expenses for hormone therapy and sex reassignment surgery were legitimate treatments for GID and therefore tax-deductible under Federal law. After considering extensive medical evidence and testimony from leading medical experts, the court rejected the IRS's previous interpretation of the law that considered transgender people's medical treatment different than all other medically beneficial treatments.

The Tax Court ruled that hormone therapy and sex reassignment surgery (SRS) are legitimate, and often medically necessary, treatments for transgender people. The court rejected the IRS's contention that hormone therapy and SRS are "cosmetic," because the purpose and effect of these treatments is to alleviate suffering and enable a healthy life rather than to improve a person's aesthetic appearance. In light of the widespread recognition in the medical and mental health communities that hormone therapy and SRS are appropriate and effective treatments, the court ruled that hormone therapy and SRS are tax-deductible medical expenses. They also noted the existence and acceptance among providers of the World Professional Association for Transgender Health (WPATH) Standards of Care.

The IRS's November 2011 affirmation of the Tax Court's ruling represents the IRS's final position on the deductibility of transition-related care. It means that the IRS will not appeal the Tax Court's decision and will follow its holdings that GID is a medical condition and that hormone therapy and SRS, as treatments for GID, are tax-deductible medical expenses. As with other medical expenses, anyone seeking to deduct transition-related care from their adjusted gross income must be able to document that they incurred these expenses as treatment for a medical condition.

## **DOES THIS MEAN I CAN DEDUCT MY HORMONE THERAPY AND SRS FROM MY 2009 OR 2010 TAXES?**

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Maybe. Under the court's ruling, medically prescribed hormone therapy and SRS must be treated as deductible expenses on the same basis as any other medical care. However, there are specific rules about deductibility of medical expenses, including that the expenses must be more than 7.5% percent of the taxpayer's adjusted gross income. Also keep in mind that your taxes can always be audited, so it is very important to have clear documentation from your

medical providers that the treatment is medically appropriate for you. Check with a tax professional to ensure you are eligible for a medical deduction and that you have the proper documentation.

### **I WAS UNABLE TO DEDUCT THESE EXPENSES IN A PRIOR TAX YEAR. CAN I BE REIMBURSED?**

It depends. The IRS permits taxpayers to file an amendment of a previous year's tax returns under certain circumstances. Generally the cutoff period is three years, but there may be exceptions. Check with a tax professional to see how far back you can amend your returns.

### **WHAT ABOUT BREAST AUGMENTATION SURGERY FOR TRANSGENDER WOMEN?**

Breast augmentation surgery is deductible in some cases. The Tax Court made clear that breast augmentation surgery for transgender women is an allowable deduction as long as the taxpayer can show documentation from medical care providers that the surgery was medically indicated for the purpose of by achieving breast development that is not obtainable through hormone therapy.

### **WHAT ABOUT CHEST RECONSTRUCTION SURGERY FOR TRANSGENDER MEN?**

This should also be deductible in some cases. While the Tax Court's ruling did not directly involve these procedures, they should be also be deductible so long as the taxpayer can show documentation that the surgery was part of appropriate medical care for that person.

### **CAN I PAY FOR THESE EXPENSES THROUGH A FLEXIBLE SPENDING ACCOUNT?**

Yes. Medical care that would qualify for a tax deduction may also be paid for through a flexible account, subject to annual caps, documentation and other requirements of your FSA. Check with your employer or FSA administrator about how to submit claims.

### **IF I HAVE TRANSITIONED IN A PREVIOUSLY OPPOSITE-SEX COUPLE, CAN I STILL FILE TAXES JOINTLY WITH MY SPOUSE? ARE MY SPOUSE'S HEALTH BENEFITS THROUGH MY EMPLOYER STILL NON-TAXABLE?**

Yes. Under state marriage laws, the validity of a marriage is determined at the time of marriage. If you were legally an opposite-sex couple when you married, your marital status cannot be invalidated by subsequent events. For the same reason, the federal Defense of Marriage Act does not prohibit federal recognition of married couples in this situation. You should be able to file jointly as a married couple, and are not required to count a spouse's employer-provided health benefits as taxable income.