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Tax Court Rules In Landmark Sex-Change Case

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By Arden Dale

Six lawyers were a lot to fight for a \$5,000 tax deduction. But the team had a landmark win when it sued the Internal Revenue Service over a sex-change write-off.

The Tax Court this week said Rhiannon G. O'Donnabhain, a native Bostonian and one-time civil engineer, could deduct the cost of medical procedures to change her gender. In a 139-page opinion, it overruled the IRS, which had denied the deduction.

The case of O'Donnabhain v. Commissioner of Internal Revenue turned on expert testimony about whether gender identity disorder is a mental illness or a disease. Experts agreed the condition is recognized in the medical community and that the standard care can involve hormones and surgeries.

Jay Starkman, an Atlanta certified public accountant and author of the book "The Sex of the Hippopotamus, A Unique History of Taxes and Accounting," said it was the first time the Court "has had this fact pattern," and that a political battle over the issues "brought out the heavyweights." The latter included three experts on gender identity disorder who traveled from around the country to testify.

"This will be the landmark case on what constitutes cosmetic surgery for tax purposes," said Starkman.

The IRS is likely to appeal the decision, he added, but the agency declined to comment.



(AP Photo/Josh Reynolds)

Rhiannon O'Donnabhain lived or 57 years as a father, a husband, a sailor and a construction worker. O'Donnabhain sued the IRS over denial of tax deduction for a sex-change operation.

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O'Donnabhain was born a genetic male. In 1997, a therapist diagnosed her with gender identity disorder, and she undertook a course of medical treatments that included her 2001 hormone therapy, sex-reassignment surgery and breast augmentation. The treatments cost \$21,471, and O'Donnabhain asked to write off around \$5,000 on her federal income tax in April 2002. Section 213(a) of the tax code allows a deduction for expenses paid for medical care over 7.5% of adjusted gross income.

The IRS sent a refund in 2002, but audited her six months later. The agency then turned down the deduction, saying the treatments were cosmetic, and therefore not qualified under Section 213(a).

Karen Loewy, an attorney for Gay & Lesbian Advocates and Defenders, represented O'Donnabhain along with two other lawyers for GLAD, and three others from a Boston law firm. (Four attorneys represented the IRS in the case.) Along with the Court, she dismissed the idea that the procedures were cosmetic. The Court, she said, was very careful in trying to get a medical consensus that gender identity disorder is a legitimate disease under Section 213(a); and "that hormone therapy and surgeries are the recognized the course of treatment."

As for the legal fees, which in usual circumstances would certainly have exceeded the actual tax in question, they amounted to zero. The attorneys all worked pro bono. The tax code, said Loewy, allows for the deduction and "this was about the principle."

Established by Congress under Article I of the U.S. Constitution, the Tax Court is in Washington, D.C., and its judges travel around the country to conduct trials in various cities. The court is a place taxpayers can go when they think they have gotten a raw deal from the IRS.

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