



## INTERNAL REVENUE SERVICE

### ISSUE: IRS' REFUSAL TO CONSIDER GENDER IDENTITY DISORDER-RELATED HEALTHCARE TAX DEDUCTIBLE

**POLICY DESCRIPTION:** The I.R.S. interprets the term “medical care” in the Internal Revenue Code to exclude all care related to gender identity disorder (GID) for purposes of taking a federal tax deduction. This care may include hormone therapy and sex reassignment surgery. Though the American Medical Association recognizes GID as a serious medical problem that often requires medical interventions, the I.R.S. has refused to consider GID-related care tax-deductible. However, the definition given within the I.R.C. should encompass GID-related care. I.R.C. §213 establishes the principle that expenses taxpayers incur for procedures or care intended to be medical or therapeutic in nature are deductible. Specifically, I.R.C. §213(d) states:

“For the purpose of this section –

(1) The term “medical care” means amounts paid—

(A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body...”

GID-related care accomplishes both the goals established in I.R.C. §213(d)(1)(A). The care treats the disease and affects a structure or function of the body. Medical professionals frequently diagnose and treat GID. GID is recognized by both the American Psychiatric Association (APA) and the American Medical Association (AMA) as a condition requiring treatment. It is cited in the Diagnostic and Statistical Manual of Mental Disorder<sup>1</sup> and the AMA passed a resolution in July of 2008 that emphasizes the need for care for people with GID, referring to GID as “a serious health condition.”<sup>2</sup>

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<sup>1</sup> *Diagnostic and Statistical Manual of Mental Disorders* (4th ed. Text revision)

(2000) (“DSM-IV-TR”), 576-82.

<sup>2</sup> American Medical Association House of Delegates, Resolution: 122 (A-08).



Refusing to consider the medical care related to GID within the scope of I.R.C. §213 contradicts the expertise of the American medical community. It also puts an enormous burden on people who seek the appropriate care for their medical diagnosis. Further, it stigmatizes transgender people by denying the legitimacy of providing essential medical care.

**RECOMMENDATIONS FOR CHANGE:** The specific recommendations for change are difficult to make at the moment giving a pending taxpayer's case challenging the IRS' position. The outcome of that case will significantly effect how the IRS position can best be reversed. Currently, there is both a pernicious practice of auditing taxpayers and denying deductions. There has also been a chief counsel's letter issued that formally states the policy. The best course of reversal will depend on what the Federal Tax Court says in the challenge to the IRS' position and could range from: (1) correcting the analysis behind the chief counsel's letter; (2) deciding not to appeal a favorable outcome for the taxpayer in the case; (3) issuing a revenue ruling clarifying that SRS-related treatments and procedures are medical care; (4) others depending on the case analysis.