

Please note: this handout provides information about law that may be of particular interest to transgender people. But legal information is not the same as legal advice – the application of law to an individual’s specific circumstances. Also, this information was compiled in June 2010 and the law may have changed. If you have a question about a specific fact situation, you should contact an attorney directly. Need help finding an attorney? Check out resources from the Minnesota Lavender Bar Association (MLBA) at www.mnlavbar.org.

Q: Can I get a federal income tax deduction for some of my transition-related medical expenses?

A: Yes! It is possible to receive a tax deduction for trans-related medical expenses if they were “medically necessary” for the treatment of Gender Identity Disorder (“GID”). You will need a Gender Identity Disorder diagnosis from a professional who can attest that the medical care or services you received were medically necessary to treat Gender Identity Disorder. Eligibility for the deduction will also depend on your income and the amount of your expenses.

Q: What kinds of transition-related medical care and services may qualify as expenses eligible for the deduction?

A: The Tax Code states that a taxpayer may deduct payments made “for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body.” Transgender people may be eligible to deduct their medical expenses because “Gender Identity Disorder” is a condition listed in the Diagnostic and Statistical Manual of Mental Disorders (“DSM-IV”). As such, transitioning expenses may be medically necessary to treat Gender Identity Disorder.

If you incurred expenses for therapy, hormone replacement therapy (estrogen or testosterone via pill, gel, patch, or injection), or sex reassignment surgery (vaginoplasty, phalloplasty, and top surgery for transgender men), the expenses may qualify. Travel and lodging expenses essential for such medical care may also qualify.

There is still some gray area about which surgeries might qualify, but the rule of thumb seems to be that “medically necessary” treatments and procedures will qualify, but those that are cosmetic may not. It can be difficult to predict what may be considered cosmetic instead of medically necessary. For example, in 2010, a court found that vaginoplasty qualified, but breast augmentation did not qualify because the individual was on hormones and was able to grow small breasts.

Q: How much of my expenses can I deduct?

A: Currently, you can deduct all of your combined medical expenses paid during the year that exceed 7.5% of your adjusted gross income (AGI).¹ For example, if your AGI is \$30,000, you could deduct medical expenses that exceed 7.5% of your AGI or \$2,250. If you had \$10,000 of medical expenses during the year, you can deduct \$7,750 (all of the expenses over \$2,250).

Q: I did most of my medical transition a few years ago, and now I'm considering additional surgery. Will my new expenses qualify for the deduction?

A: It depends. In order for your expenses to be qualified they must be incurred for essential treatment of anxiety and distress that occurs from Gender Identity Disorder. You must be able to show that the procedure or services were necessary to treat your *ongoing* Gender Identity Disorder. For example, breast implants may not be considered necessary treatment if you already have breasts that formed from hormone therapy. Many people spread out their medical transition over years due to cost or personal reasons, so a few years between the start of hormone therapy and chest or genital surgery should not prevent you from deducting the expenses if they are otherwise qualified as expenses. You should confirm that your therapist or doctor agrees the additional surgery is a medically necessary treatment for your *ongoing* Gender Identity Disorder.



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¹ Please note that beginning in 2013, the income threshold will require the combined expenses to exceed 10% of gross income.

Q: As part of my sex reassignment, I had some surgery that might normally be considered “cosmetic surgery.” Are my expenses from this surgery deductible?

A: It depends. Surgery to treat severe Gender Identity Disorder should be deductible, but the law is unclear when it comes to whether typical cosmetic surgeries are deductible. The general rule is: if the procedure is necessary to treat severe Gender Identity Disorder, and is a commonly prescribed treatment for Gender Identity Disorder, it should be deductible. Make sure that your doctor or therapist will be able to attest and confirm that the procedure or care was medically necessary to treat Gender Identity Disorder.

Q: I have never been diagnosed with Gender Identity Disorder but I have received transition-related medical care. Can I deduct my medical expenses?

A: You probably shouldn't. It is essential that your history of Gender Identity Disorder be documented by a therapist (sometimes two) in order for your deduction to survive an audit by the Internal Revenue Service. For medical deduction purposes, a health professional must determine that sex reassignment is medically necessary, and only medically necessary expenses can be deducted from your income on your tax return.

Q: Excuse me, but I don't think that I suffer from a “disorder” or “disease.” Can I still deduct my medical expenses?

A: Unfortunately, to receive the medical expense deduction, the treatment must be to cure a medical condition. Although many people find the categorization of transgender identity as a psychological condition to be deeply offensive, Gender Identity Disorder's listing in the DSM-IV has created some legal opportunities for transgender people to get much-needed supports and protections. However, no one will force you to take the deduction if you don't want it! Keep in mind that if the IRS audits your return, you will have to defend your treatment for Gender Identity Disorder as a psychological condition.

Q: My insurance company covered some of my transition-related medical expenses. How much of my total qualifying expenses can I deduct on my tax return?

A: The deduction only applies to expenses not compensated for by insurance or otherwise. Therefore, any medical expenses you paid for out-of-pocket that were not otherwise reimbursed would qualify. For example, if 80% of your expenses were covered by insurance, and you paid 20% out-of-pocket, then you can probably claim 20% of your expenses (to the extent the 20% of expenses exceeds 7.5% of your adjusted gross income).

Q: I paid for someone else's transition-related medical care. Can I deduct these expenses on my tax return?

A: The deduction only applies to expenses incurred by you, your spouse, or your dependent. You may be able to claim the deduction if you paid for your spouse's medical care, or your legal dependent's medical care. Unfortunately, non-married partners or same-sex married partners are not recognized as spouses in this context due to the Defense of Marriage Act (“DOMA”). However, you may be able to claim the deduction if your non-married partner or same-sex partner qualifies as your dependent.

Q: I didn't realize that my expenses from 2007 and 2008 qualified for a medical expense deduction! Can I take that deduction for those expenses in this current year instead?

A: Medical expenses will qualify for a deduction in the year the expense is incurred. However, you may be able to amend previous tax returns as far back as 3 years. You should consult a tax advisor to see if your expenses qualify and whether you could benefit from amending your income tax returns.

Q: I take the standard deduction on my tax return. Can I get a tax benefit?

A: Unfortunately, the medical expense deduction is a “below-the-line” deduction, and you can only take the deduction if you itemize your tax return. However, if your medical expenses are large enough, it may make sense for you to itemize your deductions rather than take the standard deduction.

Q: Below-the-line? Adjusted gross income? Itemized deductions? Dependents? I don't know what any of this means. Help!

A: Tax preparation can be confusing! If you think you need help determining whether your medical expenses qualify for a deduction, contact a tax professional for an individualized explanation. If you need help finding a tax attorney, check out the Minnesota Lavender Bar Association's member directory: go to <http://www.mnlavbar.org> and click on “Member Directory.”

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