

# *Citizens United*, Free Speech and the Tax Man

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In its *Citizens United* decision, the Supreme Court of the United States opened up a new avenue for expression of political ideas by corporations and trade associations. Such entities may now use Treasury funds to run advertisements that expressly advocate the election or defeat of a candidate. Such freedom is not free, however, for the Internal Revenue Code and the Internal Revenue Service (IRS) exact a cost on corporations and other entities engaging in such free expression.

First, corporations may not deduct as usual and normal business expenses their expenditures for express advocacy. Thus, like lobbying expenses, corporations effectively take a 35% hit on each dollar that they expend for political advocacy. As a result, not only is the cost of advertisements or communications a hit to the bottom line, the fact that the expenses are not deductible makes that hit even bigger.

Second, 501(c) organizations (other than 501(c)(3) charities, which may not engage in express advocacy) are subject to "527 tax" liability for expenses they incur with respect to political advocacy. The tax is the 35% corporate tax rate and would otherwise transform all political costs into 135% of the costs of the communications, etc., if it were not for a particular provision that applies the tax only on the lesser of the political expenditures (called "exempt function" expenditures in IRS-speak) or the aggregate investment income for the organization for that year. Even with the tax, the 501(c) organization must ensure that political activity does not become its primary purpose, or else it risks losing its tax exemption.

Finally, contributions to 527 political organizations that engage in independent expenditures are treated by the IRS in the same ways as described above for direct expenditures for independent communications. The contributions are not deductible and may

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trigger the 527(f) tax for 501(c) organizations.

In sum, freedom isn't free, even when it is permitted by the Supreme Court.