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Measure 37: The billion-dollar gift never given

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As Ronald Reagan might have said to The Oregonian's editorial board, "There you go again."

Under the headline "Red Flags of Worry," (March 11) an editorial informs us that the American Land Institute has concluded that Oregon's rural landowners have received $4.9 billion in gifts since 1974. This very large number is offered as yet another reason for the Legislature to rescue duped voters from Measure 37's folly.

The American Land Institute sounds important, the kind of place where fair-minded policy wonks just look at the facts. Well, not exactly. The man who is its founder, executive director and one of its three board members is none other than the founder of 1000 Friends of Oregon. Perhaps we should take the institute's report with a grain of salt.

The theory behind the land institute's $4.9 billion is that farmers, some of whom are Measure 37 claimants, were awarded a tax break under Senate Bill 101, a companion to Senate Bill 100, 1973's major land-use planning law.

Actually, this "tax break" for farmers dated from the 1960s. Its purpose, said the Legislature, was to assess farmland "at a value that is exclusive of values attributable to urban influences or speculative purposes." In other words, assess it at its value for farming. The fear was that rising taxes on farmland due to its value for development would force farmers to sell just to pay their property taxes.

Senate Bill 100 changed things by creating exclusive farm zones in which farmers could not develop their land, even if they wanted to. So one puzzle is how the American Land Institute concludes that paying taxes on the value of land in its only legally permitted use is a tax break. And by the way, the institute apparently forgot to mention that this is a "deferred taxation," not a "preferential assessment," system. That is, when land benefiting from exclusive farm-use assessment is taken out of farm use, back taxes for up to 10 years are due.

Watch your wallet when someone claims that taxes not levied are somehow a gift from the government to the would-be taxpayer.

Some tax breaks are, in fact, preferential, such as when taxes are reduced or waived to induce a company to locate locally. That might fairly be called a public investment. But the farmland assessment rules as applied in exclusive farm zones are no more a public investment than is our recurrent decision not to impose a sales tax. Farmland assessment is designed to assure that farmers pay only their fair share, in light of restrictions on the use of their land.

The Oregonian's editorial says, "Measure 37 claims imperil 74,524 acres . . . of farmland and . . . forestland." Apparently the editorial board hasn't read one of the most widely referenced academic articles in any discipline, "The Problem of Social Cost" by Nobel laureate Ronald Coase. Coase explains that subdivisions are no more a threat to farm- and forestlands than the latter are to the former. Of course, those who prefer open space will see it differently from those seeking housing in nice neighborhoods. But neither side gets exclusive claim to the public interest.

And one final point: The American Land Institute reports that, as an investment, Willamette Valley farmland has outperformed the S&P 500 over the past 40 years. Because the federal data on which the estimate is based does not distinguish between farmland in exclusive farm zones and farmland open to development, the average value of regulated farmland in Oregon is probably overstated.

But the comparison with the S&P is really beside the point. The question under Measure 37 is not what yield could have been earned in a different investment. It is what yield reasonably could have been expected if the land had not been regulated.

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