

EDITORIAL

Will Legislature scuttle mortgage interest deduction?

The mortgage interest deduction has been popular with homeowners. It has been beloved by real estate agents.

Economists dislike it. Many Democrats in the Legislature have had their eye on changing it. And although Gov.-elect Tina Kotek didn't say she wanted it gone in campaign stop after campaign stop, she has been willing to look at changes to it, too.

It does seem like the Legislature is gearing up to make changes to tax policy, tax rates and tax exemptions. On Monday, Nov. 28, an interim legislative committee kicked off the first of three meetings on revenue in Oregon.

Our advice: Don't watch that meeting. Lots of useful historical background. But dry. Little hint of what the Legislature might do.

If you were placing bets, a pretty sure one would be legislation to change or do away with the mortgage interest deduction in the next session.

You may like your mortgage interest deduction if you are lucky enough to be purchasing a home. Helps keep your taxes down. It may encourage people to buy homes.

But the arguments against it are many, consistent and may be winning.

According to the language in Oregon law, taxes are supposed to be things like fair, not regressive, evenly distributed and efficient.

The mortgage interest deduction fails to tick some of those boxes in some ways, as a state report laid out.

Most of the benefit goes to higher-income taxpayers. That's because generally you get more tax benefit from buying a more expensive home.

Taxpayers in more urban counties benefit more.

Minorities benefit less because they are less likely to own a home.

The argument is it also helps to drive up the cost of housing, because of the presumed benefit created by the deduction.

And it is also a lot of money. The mortgage interest deduction is estimated to cost the state about \$1 billion in foregone revenue from 2021-2032.

So, is it any wonder legislators are looking at it?

For instance, one proposal has been to eliminate it or reduce it and use the money to help more people with housing.

You could argue that there are other more pressing issues with Oregon's tax system. There is dramatic variation in tax rates for historical reasons among counties and among cities. The interplay between tax rates, Measure 5 and Measure 50 created other oddness in property taxes paid between even similar homes. Oregon's corporate activity tax is a pyramiding tax structure on businesses that brought in a lot more money for education \$1.4 billion in 2021, but just look at Oregon's K-12 education performance. Not quite where we would want it to be.

Out of all the possibilities for changes, it may be the mortgage interest deduction that will be debated. Tell your legislator if you want it to stay or go.

■ *Unsigned editorials are the opinion of the Baker City Herald. Columns, letters and cartoons on this page express the opinions of the authors and not necessarily that of the Baker City Herald.*

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"DESPITE OUR LOCKDOWNS, THE VIRUS CONTINUES TO SPREAD!"

OTHER VIEWS

Supreme Court should separate sleazy lobbying from criminal kind

By STEPHEN L. CARTER

The U.S. Supreme Court heard oral argument Monday in the most important case you've never heard of. Although *Percoco v. United States* has generated few headlines, its reach could alter the way businesses deal with regulators and legislators.

The case arises from the 2018 conviction of one Joseph Percoco, who took a break from his job in Governor Andrew Cuomo's office to run Cuomo's reelection campaign. During his time away, a company having trouble with state labor regulators offered him \$35,000 if he could, let us say, make the problems disappear. Percoco placed a few calls to key officials, the regulators backed off, and the company was happy. And Percoco then returned to his senior role in state government after Cuomo won his new term.

Sure, sounds a wee bit grafty. But the question the justices agreed to consider isn't whether Percoco is a shining example of ethical probity. The question is whether he violated a federal statute aimed at punishing pub-

lic officials who take bribes. The jury found he did, and the U.S. Court of Appeals for the Second Circuit rejected his defense that the law didn't apply to him because when he took the money and placed the calls he was, technically, a private citizen.

The Second Circuit's opinion makes fun reading. The text abounds with references to "The Sopranos" and schemes to "keep the ziti flowing." But the relevant issue isn't whether Percoco was a sleazy character who hatched sleazy plans. The relevant issue is whether those sleazy plans violated a murky 1988 congressional amendment that prohibits participation in "a scheme or artifice to deprive another of the intangible right of honest services" — what's become known as "honest services fraud."

Percoco argues that this language is so broad that it could apply to a huge number of people, including lobbyists. To show the influence top lobbyists have, Percoco's brief cites a 2012 study which found that lobbyists whose key Senators leave office lose a whopping \$182,000 in annual revenue.

The Justice Department rejects the analogy, arguing that none of these well-connected lobbyists function, even informally, as public officials. That would be reasonable, except that the test for who functions as a public official is so murky — a major factor is whether government employees feel obliged to treat the lobbyist's requests as commands. There are plenty of lobbyists so powerful that the lowliest bureaucrat trembles to cross them.

Consider the very real case of a legislator convicted under the statute after voting the way a lobbyist urged. In upholding the conviction, the U.S. Court of Appeals for the Third Circuit explained that even though entertaining legislators was part of the job, here the lobbyist — who was also convicted — had entertained the legislator too lavishly. How much is too much? Read the court's guidance for yourself:

[A] lobbyist does not commit honest services fraud ... if his 'intent was limited to the cultivation of business or political friendship.' He commits those violations 'only if instead or in

addition, there is an intent to cause the recipient to alter her official acts.'

This guidance fails to guide. It seems to say that a lobbyist is innocent as long as the lobbyist doesn't lobby.

This is Percoco's point, and it's a good one. Whatever one thinks of his conduct, the way the lower courts have construed the statute leaves prosecutors far more leeway than Congress likely intended. Critics who call the case a classic example of prosecutorial overreach aren't entirely wrong.

The true problem isn't the prosecutors but the statute itself. Put Percoco aside and think instead about the rest of us. A minimum democratic fairness demands that crimes be spelled out with crystalline clarity. When we interact with the government that serves us, we should not be left to guess whether we're breaking the law.

■ *Stephen L. Carter is a Bloomberg Opinion columnist. A professor of law at Yale University, he is author, most recently, of "Invisible: The Story of the Black Woman Lawyer Who Took Down America's Most Powerful Mobster."*

COLUMN

Marveling at America's return to the moon

America is going back to the moon and I marvel, anew, at what our nation can accomplish when it sets for itself immensely difficult but straightforward goals.

As I watched the Space Launch System rocket rise above the launchpad at Florida's Kennedy Space Center on Nov. 15 I felt something like the emotion I do when I stand, just before the opening notes or words of "The Star-Spangled Banner" ring out, and place my right palm on my chest.

I don't suppose any endeavor is immune to the political discord that so often afflicts our national conversations.

But a task such as NASA's Artemis lunar program, although daunting in its mechanical complexity, is in another way blessedly simple.

It either works or it does not.

When the countdown reaches zero the details that dominate so many other topics and so often lead us astray — how we feel, in particular — are meaningless.

The rocket either fires or it does not. As with all machines it knows nothing of political affiliations or personal beliefs about things for which there is no absolute answer, but only opinions.

The only relevant question, when it comes to the rocket, is whether the people who designed and built the thing did their work properly.

That alone determines whether the rocket flies true.

And the same holds true for the later Artemis missions, including the one that will, as early as 2024, bring astronauts to an orbit around the moon for the first time since the final Apollo mission in 1972.

Perhaps only a year later, in 2025, Americans will also land on the lunar surface and plunge their boots into the dust that Neil Armstrong and the 11 who followed him



Jayson Jacoby

made so famous more than half a century ago.

Artemis is not universally praised, to be sure.

But then neither was Apollo, despite the widespread notion that America's race to the moon against the Soviet Union was an anomalous example of national unity during the 1960s, a decade marked by strife over the civil rights movement and the Vietnam war.

One of the chief disagreements regarding our space program — albeit one largely confined to scientists and academics, and not shared by the general public — is whether or not we ought to have astronauts at all.

Some NASA critics argued then — and not without logic — that unmanned spacecraft can accomplish the scientific goals of exploration for considerably less money. Sending humans into space, and keeping them alive in a place utterly inimical to life, is inevitably more complicated, and expensive, than flinging machines out of Earth's atmosphere.

This complaint persists.

Alex Roland, an historian from Duke University, recently told the Associated Press, following the Nov. 15 launch, that "in all these years, no evidence has emerged to justify the investment we have made in human spaceflight — save the prestige involved in this conspicuous consumption."

Roland's implication — that NASA is in effect letting vanity influence what should be a purely scientific endeavor — ignores the reality that Artemis, like Apollo and Gemini and Mercury before it, are the

product of human curiosity and ingenuity.

I believe the value of those earlier programs — and in particular the six Apollo missions that put 12 astronauts on the moon — would be nothing like as great as it was had the rockets carried only machines.

Sensors can measure all sorts of variables with a precision people can never match.

Machines can collect samples of lunar dust and rocks, can take fine photographs, can tell us how hot and cold it gets, how strong the pull of gravity is.

But no device can describe to us, back on Earth, what it is like to see our planet rise above the lunar horizon.

Or what it's like to walk on the moon.

These observations might have little scientific value, being inherently subjective.

But to the Americans whose tax dollars pay for these missions, the words of an astronaut resonate more powerfully than a column of data ever could.

Machines can gather that data.

But only humans can, in effect, represent the tens of millions of us who will never leave our planet — only astronauts can return from their voyage and tell us how it was, in ways we can understand.

We recognized the irreplaceable role of the astronaut in the 1960s.

And I'm gratified that, despite the nearly inconceivable advances in technology that have happened since the final Apollo mission, we continue not only to acknowledge the human role but to celebrate it.

For me — and I believe for most of us — America won't truly return to the moon until one of us actually steps onto the lunar surface.

I hope the astronauts are already working out what they'll say in that most monumental of moments.

■ *Jayson Jacoby is editor of the Baker City Herald.*