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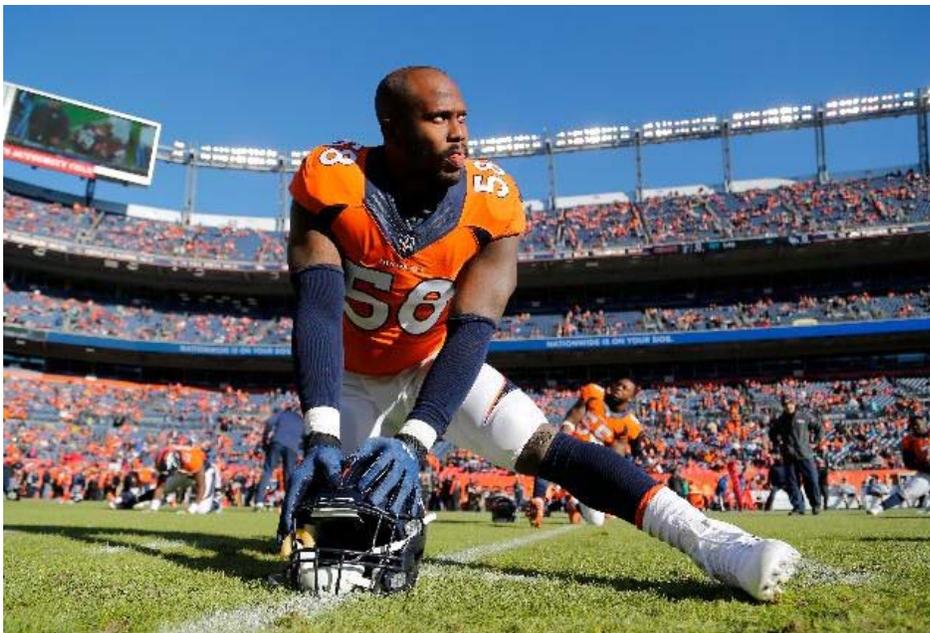
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New Fart Tax Is Not As Stupid As It Sounds

John Elway's Denver Broncos have made history in several ways, but the team is unlikely to court some of the publicity it is getting now over a fart tax. [Von Miller](#), the team's star linebacker, revealed details of the [Denver Broncos fart tax](#). The idea is to charge to correct or prevent targeted behavior. In this case, it's Denver's way to cut back on a real annoyance during team meetings. It's a kind of toll charge.

Our federal government does this a lot, and arguably in ways less sensible than the Broncos. These are so-called [sin taxes](#), also called Pigovian taxes after 20th century British economist Arthur Pigou. They target behavior that harms others. Soda taxes, for example. Taxes on cigarettes and alcohol counter social and health costs.



Denver Broncos outside linebacker Von Miller (58) stretches prior to an NFL football game against the Oakland Raiders, Sunday, Dec. 28, 2014, in Denver. (AP Photo/Jack Dempsey)

London's city center driving congestion charges reduce pollution and traffic. A soda tax generates revenue and reduces obesity. If you don't imbibe in any of these things too much, it's a win-win. Of

course, fashions change over time. Moreover, we like to regulate, and regulating by taxing is quite American.

There's Botox, tanning, music downloads, soda and more. These [sin taxes](#) are really excise taxes, like those on alcohol, cigarettes and candy. They are indirect and technically imposed on producers or sellers. As a practical matter, of course, they are usually passed on to buyers, like sales tax only more targeted. Suspect services can be targeted too.

A good example was the 10% tanning tax that went into effect in July 2010. It was projected to raise \$2.7 billion over 10 years from the nation's 20,000 indoor tanning salons. In reality, the tax has been a big failure in the revenue department. About the only thing it did produce was a lot of [government regulations](#) and line-drawing. Much of this concerned how fees should be divvied up between tanning and other services.

The IRS even issued guidance about tanning salon points akin to frequent flier miles useful for more tanning or for lotions and facials. See IRS Chief Counsel Advice [201128024](#). Ultimately, though, the tanning tax produced few collections. Proponents suggest this must mean that the tax is doing its job of discouraging the targeted conduct. And in government, presentation is everything.

The first *real* soda tax was in Berkeley, California. The beverage industry reportedly spent about \$2.3 million in Berkeley and failed to stop the measure. More money was thrown at larger and more influential San Francisco, where a soda tax was defeated. Famously liberal Berkeley was low hanging fruit. Yet it was still seen as a pivotal victory that could mean more soda taxes to come in more mainstream cities.

Berkeley has only 117,000 residents. But as with many excise taxes, the line-drawing can seem arbitrary. After all, it is worth asking why sweetened tea should pay but not sweetened coffee drinks. Why should vitamin C fortified punch be taxed but not orange juice?

Still, some figures suggest that if the soda tax goes national, there will be huge health gains, perhaps preventing 100,000 cases of heart disease, 8,000 strokes and 26,000 deaths. Big Soda says its products do not make you sick. Soda taxes won't make people healthier, and they are just about money.

For alerts to me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.