PERSPECTIVE

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Weiner, taxes and the state of California

By Robert W. Wood

You have to hand it to former New York Congressman Anthony Weiner. Anyone else would throw in the towel. As a self-professed gym rat, he has many of them. But Mr. Weiner is steadfast about one thing: staying in the mayor's race.

Perhaps he is steadfast, a kind of iron man, in another region, too. The famously photogenic gym rat and former congressman was still sexting after he gave up his congressional seat. Maybe he even viewed it as an accolade for his youthful vigor given his "grandpa" remark to Republican mayoral opponent George McDonald. Mr. Weiner's age-inappropriate remark was ill-timed, right before an AARP meeting.

It seems he is steadfast as well in his ability to find new ways to offend. But you have to give him a hand. This quick-change artist was able to rebound by taking cookies to seniors and revealing his sincerity. Truly, only a real Weiner could pull it off in public.

Many have called for Weiner to pull out–from the mayor's race. Yet despite his low poll ratings, Mr. Weiner does not do things half-way. He does, though, take a page from the latest Viagra commercials. For Mr. Weiner, this is the age of taking action.

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That meant hiring supporters to appear at political events. Paying shills to cheer you on is taking action alright. As the ads say, giving up isn't who you are. That means if New Yorkers want to rid themselves of his antics, they must go to the polls.

Even that may not be enough to stop this never-say-die maker of sausage. For a true Weiner Ban, the City That Never Sleeps could emulate its Soda Ban. Like so much else Bloombergian, the soda ban was historic. But it was struck down. The soda ban failed because it was a ban, which seems un-American. A tax is anything but un-American.

One study estimated that a 15 percent cut in consumption of sugared beverages would prevent many deaths and illnesses and save billions in medical costs. Plus, a soda tax would generate billions in revenue. I'm lovin' it. Unlike bans we can't abide, we *do* understand new taxes. And we in California are particularly used to them. Just ask Jerry Brown.

Federal, state and local governments love to regulate by taxing. There's Botox, tanning, music downloads, alcohol, cigarettes, candy and more. Sin taxes target what legislators view as socially irresponsible behavior. They raise revenue and decrease the targeted bad conduct. Win-win.

These taxes are usually passed on to buyers just like sales tax. Services can be targeted, too. A proposed tax on cosmetic surgery, aka the Botox tax, would have imposed a 5 percent excise tax. Instead, a 10 percent federal tanning tax was imposed, projected to raise $2.7 billion from 20,000 indoor tanning salons.

In this light, a Weiner tax sounds perfect, and is something even Californians don't yet have. It could help discourage the man, the candidate, the sexter, and could raise revenue. It could take a number of variations.

The Weiner Poll Tax could slap a tax on anyone voting for Mr. Weiner. Some famously contentious New Yorkers might still vote for Huma's other (not to say better) half, but most? I doubt it.

The Weiner Pole Tax could emulate the pole taxes used to stamp out strippers. And a Weiner Pole Tax would thus seem eminently suited for Anthony's proclivities.

The Polish Weiner Tax could be fashioned after junk food taxes that raise revenue and discourage consumption. Still, if only Polish dogs were taxed, expect some relabeling of sausages.

A Ballpark Weiner Tax could just tax dogs consumed at the ballpark. Yankee Stadium is in the Bronx. The Mets play at Citi Field in Queens. But Mr. Weiner was born in Brooklyn. In taxes or otherwise, it sure seems like Brooklyn should answer for it.

And that brings us to California, where we seem to love paying even *retroactive* taxes. The whole nation took note when the state passed huge and retroactive tax increases in November of 2012. California's Proposition 30 increased state tax rates for those earning $250,000 to $300,000 a year to 10.3 percent, up from 9.3 percent. For $1 million-plus earners, California's rate is 13.3 percent, up from a prior top rate of 10.3 percent.

One notable kerfuffle was from impromptu tax spokes-model Phil Mickelson. The affable golfer landed in hot water by noting he was paying a lot in taxes and intimating that he might move. The outrage was palpable. How dare he?

At least Tiger Woods supported his colleague, admitting that he had moved to Florida in the 1990s, in part due to California's high taxes. By comparison, the combined state and local top rate in New York is 12.7 percent. Most Californians also haven't noticed California's land-grab sized tax increase over small business stock.

A tax incentive program was enacted in California 20 years ago to lure entrepreneurs and early-stage investors. The incentive allowed sales of stock of a qualified small business to be taxed at half of the regular state rate on capital gains or rolled over into a new qualified small business if reinvested within 60 days of the sale. It emulated federal law, but had California's now predictable twists to make the rule much more complex, but less valuable, and much more California-centric.

But still, many in California benefited from the rule. Until now. California's mercurial Franchise Tax Board claims the power to tax the money retroactively — with interest — all the way back to 2008 for the 50 percent of the taxes people had legally excluded under the incentive program. The FTB made this decision in response to a court ruling in *Cutler v. Franchise Tax Board*, 2012 DJDADR 12033 (Aug. 28, 2012).

There, the 2nd District Court of Appeal ruled that a provision requiring a business to have 80 percent of its payroll and assets in California to qualify for the incentive violated the Constitution's Commerce Clause. Most people thought that meant California could not enforce the California-centric nature of the law. California's FTB, however, said it meant the law was gone.

Plus, most controversially, the FTB said it would go after all the state's taxpayers who had claimed the benefit in the past. In a tax grab with the chutzpah of Anthony Weiner, the FTB is doing it, too, even though it is clear that the court did not order the collection of taxes that had been forgiven under the program. A lawsuit over it is pending.

Fortunately, California can at least boast state legislators who are too busy to be snapping "selfies," a term recently added to the Oxford English dictionary. In response to the outrage of more than 2500 small businesses that would be severely affected by the retroactive taxes, California Sen. Ted Lieu, with the help of Assemblyman Jeff Gorell, introduced Senate Bill 209 earlier this year. In its initial form, the bill permitted the full 50 percent of taxes excludable under the incentive program to remain excludable, effectively denying the FTB's plan to collect.

Significantly, it also required the FTB to waive all penalties and interest assessed. SB 209 was overwhelmingly passed May 30 by the state Senate, though with less-than-ideal amendments — excludable income is now set at 38 percent instead of 50, meaning the FTB would in fact get a cut. See California State Legislature, SB-209 Income taxes: exclusion: deferral: qualified small business stock (2013-2014).

The bill still needs to be finalized by the Assembly before going to Gov. Brown for approval. As long as key Assembly members keep their camera phones out of their pants, this saving grace to California's small businesses just might come through. Please take note, Mr. Weiner.

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