

California is planning to auction some of the carbon allowances in its new cap-and-trade system. There's an interesting question about whether the auctions should be considered a "tax" under state law, which may turn in part on what the money is used for. If the auctions are considered a tax, they would run into trouble under California's famous anti-tax initiative, Prop 13.

Berkeley's [Center for Law, Energy and Environment](#) has released a new [report](#) on this issue. In general, we agree with other observers (such as our [UCLA colleagues](#)) about the rankings of key spending choices in terms of their level of legal risk. In general, the more closely a spending option is tied with climate change, the lower the risk. However, in terms of the absolute level of legal risk, we identify some significant arguments for upholding even the options with a higher level of risk, such as putting the proceeds in the general fund.