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ICYMI: *Sacramento Bee*: New Regulatory Scheme Used to Raise Billions in Hidden Taxes

Dan Morain and Dan Walters both comment on the billions in new tax revenue generated through a questionable new scheme

(SACRAMENTO)—California’s cap-and-trade auction is raising billions of dollars of revenue from businesses and taxpayers without the 2/3 vote required for new taxes. This hidden tax is a topic of discussion by leading political journalists, *The Sacramento Bee*’s Dan Morain and Dan Walters.

***Sacramento Bee*: Dan Morain: Using windfalls and paper to fight climate change**

[Jerry Brown] presides over a cap-and-trade program that is intended to reduce greenhouse gas emissions. It’s not clear that reductions have occurred. But as an incidental byproduct of the regulation, cap and trade will generate \$2.24 billion in the coming year, enough to catch any politician’s eye.

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In January, Brown estimated cap-and-trade auctions would generate \$922 million in the coming year. He was low; as it happens, the state will be collecting at least \$2.24 billion, an embarrassment of riches.

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The landmark Assembly Bill 32 of 2006 requires that California reduce greenhouse gas emissions to 1990 levels by 2020. The legislation also led to the cap-and-trade program, though it doesn’t include the term. Instead, AB 32 makes oblique references to authorizing the California Air Resources Board to use markets to reduce greenhouse gases.

The California Constitution requires a two-thirds vote of the Legislature to raise taxes. But the Democratic-controlled Legislature approved AB 32 by a simple majority. The bill makes no mention of a tax.

If lawmakers had known they were authorizing the air board to create a program that would raise billions of dollars from businesses, “there would have been spirited legislative debate and dissent by Republicans and moderate Democrats.” There was none, the chamber told the appellate court, in a brief written by the law firm Nielsen Merksamer.

Attorneys for the air board say cap and trade is not a tax. Nor is it a fee of the sort you pay to cover the cost of renewing a driver’s license. What to call the mechanism by which the state raises the billions of dollars is murky. Whatever its name, Democratic politicians have grown quite fond of it.

To read the entire piece, [please click here](#).

Sacramento Bee: Dan Walters: Opinion: California's carbon fees generate big money

While Gov. Jerry Brown is being fairly tight about spending the state's multibillion-dollar windfall of sales and income taxes, he's not shy about spending rapidly increasing proceeds from "cap-and-trade" fees on carbon emissions.

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The more immediate issue, however, is a lawsuit filed by the California Chamber of Commerce. The suit says the fees are taxes that violate the state Supreme Court's ruling on what divides a fee from a tax, which requires a two-thirds legislative vote to be imposed.

The case is now pending before the 3rd District Court of Appeal. The Air Resources Board, which created the cap-and-trade program, has filed paperwork postulating that carbon fees are neither taxes nor fees but rather are "incidental" to regulating emissions and not meant to raise revenue.

It's a novel theory and one that departs from the ARB's previous position. It also defies common sense since carbon fees are, in fact, raising a lot of money that politicians are eager to spend on their pet projects and causes.

The outcome of the case, which presumably will wind up in the Supreme Court, will affect not only the cap-and-trade program but the legal standing of other regulatory schemes that involve extracting money.

To read the entire piece, [please click here](#).