

Alberta Repeals its Carbon Tax Legislation

June 04, 2019

On June 3, 2019, Alberta's United Conservative Party government passed Bill 1 – *An Act to Repeal the Carbon Tax* (the *Repeal Act*). The *Repeal Act* received royal assent today, and is expected to be proclaimed imminently. Upon coming into force, the *Repeal Act* repeals the *Climate Leadership Act*,¹ which enabled provincial carbon levies under the former NDP government. As a result of the *Repeal Act*, fuel purchasers will no longer be charged a provincial levy at the time of sale, and sellers and distributors will no longer be required to remit levies to the provincial government. However, this does not mean that Alberta is free from carbon tax. Alberta will soon become one of the federal backstop provinces. Albertans need to understand the federal carbon tax requirements, compliance methods and potential impacts resulting from the change in carbon regime.

Transitional Provisions and Administration of the *Repeal Act*

The *Climate Leadership Act* is repealed retroactively to May 30, 2019, and news reports indicate that the provincial government had already started implementing the changes as at May 30, 2019. For fuel purchased before the repeal date, but not yet taken into possession, no levy is deemed to have been payable at the time of purchase.² This effectively allows the purchasers to obtain a refund from the fuel seller. Further, anyone who owned fuel for the purposes of resale as of the repeal date, and who paid a carbon levy when they bought or imported the fuel, may file a report with the Alberta Minister of Energy by no later than June 29, 2019 requesting a refund of the levies paid.³ This provides a mechanism for sellers to recover levies they paid on unsold fuel which they can no longer pass on to their purchasers.

Ordinarily, any obligations and liabilities that accrued under legislation prior to its repeal remain unaffected by the repeal, pursuant to section 35 of Alberta's *Interpretation Act*.⁴ However, the *Repeal Act* deals with this by retroactively deeming those obligations to have ended. This ensures that any seller who was required to collect a carbon levy prior to the repeal, and had not done so, is no longer required by law to collect it.⁵ The transitional provisions also ensure that notwithstanding the repeal, purchasers who would have been eligible for a refund or credit this year will still remain eligible.⁶

Amendments to Other Legislation

The *Repeal Act* also makes several consequential amendments to other pieces of legislation that had incorporated portions of the *Climate Leadership Act*. For example, the *Alberta Personal Income Tax Act* 7 is amended so that tax rebates for individuals under the former scheme will only be available up to June for the 2019 tax year, and not for any subsequent months.

Impacts of the *Repeal Act* on Alberta

Although the *Repeal Act* eliminates the provincial carbon levy on the importation and purchase of carbon fuels, large emitters of 100,000 tonnes of carbon or more per year are still subject to the carbon pricing regime under the *Carbon Competitiveness Incentive Regulation* (CCIR) 8 made under the *Climate Change and Emissions Management Act*. 9 Further, no other changes have been made to other parts of Alberta's climate change plan such as the *Oil Sands Emissions Limit Act*. 10 In addition, the repeal of Alberta's carbon levy has triggered a federal response from the federal Environment Minister, Catherine McKenna indicating that the federal government "will move as quickly as possible in order to minimize a gap in coverage." 11 Alberta will likely soon become a "listed province" under the federal *Greenhouse Gas Pollution Pricing Act* (GGPPA), 12 which was introduced to ensure that a federal carbon tax applied in provinces that did not have equivalent legislation to address Canada's climate change obligations. These are referred to as the federal backstop provinces. Currently, the federal backstop provinces under the GGPPA are Ontario, Manitoba, New Brunswick, and Saskatchewan.

The Federal Backstop Carbon Regime

We had provided the details of the federal carbon pricing regime in a previous blog. While the federal backstop carbon pricing regime is similar to Alberta's former carbon tax model conceptually, there are differences worthy of note, particularly in terms of the annual price, compliance methods, ability to use compliance credits and their expiry.

For all fuel consumers, sellers and distributors, the key difference to note is that the federal carbon price rises by \$10 per year to \$50 per tonne in 2022. Given that the CCIR currently meets the federal equivalency test, large emitters may not be significantly affected, if at all, at this time. The complete picture of Alberta's new climate change plan is yet to be unveiled. It is uncertain whether Alberta's carbon price for large emitters under the CCIR will be increased annually to maintain equivalency with the federal regime. Otherwise, there is a likelihood that the federal regime for large emitters (50,000 tonnes or more per year) may also apply as a backstop in Alberta soon.

We will continue to monitor these issues and provide updates.

¹[SA 2016, c C-16.9](#)

²*Repeal Act*, s. 2(2)

³*Repeal Act*, s. 2(3)

⁴[RSA 2000, c I-8](#)

⁵*Repeal Act*, s. 2(5) (c)

⁶*Repeal Act*, s. 2(5) (d)

⁷[RSA 2000, c A-30](#)

⁸[Alta Reg 255/2017](#)

⁹ SA 2003, c C-16.7

10 SA 2016, c O-7.5

11 Michelle Bellefontaine, "Alberta carbon tax ended, though repeal bill hasn't yet passed," *CBC News*, May 2019

12SC 2018, c 12, s 186

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