

**BROWNFIELDS STUDY GROUP MEETING
MAY 17, 2018**

Tax Law Change

- New tax law addresses deductibility of costs when dealing with “violations”
- **General rule** – **cost of compliance** (not just penalties) where violations or potential violations involved – **NOT DEDUCTIBLE**
- Except –
 - Called out in settlement document as deductible
 - State determines compliance cost deduction and reports cost to IRS (suspended for now)

Brownfields Context

- State issues notice of potential violations
 - Notice of violation?
 - Notice of non-compliance?
- All costs of addressing “compliance” – remediation, not deductible unless
 - Specific settlement
 - Likely court approval required
 - Compliance items identified in settlement
 - When IRS issues guidance, cost needs to be determined and reported by state to IRS
- Substantial uncertainty; no guidance and no legislative history

Practical

- May increase cost/delays where cleanup compelled by state
- Re-look at “stepped enforcement process”