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”