



THE INSTITUTE OF CHARTERED ACCOUNTANT OF INDIA
(A STATUTORY BODY ESTABLISHED UNDER AN ACT OF PARLIAMENT)



VAPI BRANCH OF **WIRC OF ICAI**

VOLUME I, ISSUE 7, SEPTEMBER 2011



CHAIRMAN MESSAGE

Dear Colleague,

By the time this communiqué reaches you, you all must be relaxed from the work load and stressful task of tax audits. No matter, the job of tax audit is traditional and we repeatedly do every year, but still it demands lot of care and diligence for the reporting and certifying parts involved.

The month passed by witnessed a couple of TDS seminars at our branch premises for the benefit of our members, tax practitioners and bank employees within our branch jurisdiction. The seminars were arranged with the help of the expert personnel from the Income Tax Department. The attendees were made aware of various practical aspects of TDS procedural compliances and various grey areas where there are chances of non compliance resulting in penal actions from the Department and various common errors resulting in disallowance of TDS credits. We also had mock tests for IPCC, PCC and Final students at our branch premises of which many students availed the benefits.

The month of October assumes lot of religious importance, in the sense that we have many festivals like Navratri, Dusshera, Diwali, New year followed by many other festivals. Wish you all a happy festive season!!

Yours forever,

CA. Jignesh V. Vasani
Branch Chairman.

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INCOME-TAX CASE LAW UPDATES

Ss-2(15), 10(23C) (iiiab), 10(23C) (iiiad) & 10(23C) (VI): Sale of books at low rates eligible for exemption:

Assessee, a public sector undertaking of State Government, engaged in the business of printing and sale of text books at low rates to the students of the deprived section of society against receipt of subsidy from the State Government was exempt under s. 10(23C) (iiiab) and, therefore, subsidy receivable by the assessee on the sale of text books is not taxable. Bihar State Text Book Publishing Corporation vs. Commissioner of Income Tax & Anr. (2011) 241 CTR (Pat) 403

Ss-2(28A), 40(a) (i) & 195: Bills discounting charges is not interest:

Discounting charges paid by assessee to a foreign company for discounting export sale bills is not interest as defined in s. 2(28A) and since the foreign company has no PE in India, it was not liable to tax in respect of the discounting charges and, therefore, assessee was under no obligation to deduct tax at source under s. 195 and the discounting charges could not be disallowed by invoking s. 40 (a) (I). Commissioner of Income Tax vs. Cargill Trading (I) (P) Ltd. (2011) 241 CTR (Del) 443

S-6(1) (c): Employment includes own business:

Taking up own business by the assessee abroad satisfies the condition of going abroad for the purpose of employment covered by Explan. (a) to s. 6(1) (c) and therefore, assessee was entitled to claim his status to be non-resident for the relevant period. Commissioner of Income Tax vs. O. Abdul Razak (2011) 241 CTR (Ker) 485.

Ss-10 B (6), 10 B (8) & 72: Claim for exemption & carry forward of losses:

Where the assessee had forfeited the claim under s. 10 B because they were debonded by the Development Commissioner and hence in the IT return filed for 1999-2000 deduction under s. 10 B was not claimed, the technicality of non compliance of s.10 B (8) should not deprive the assessee from claiming the benefit of carry forward of business loss computed for that year. Commissioner of Income Tax vs. Torry Harris Sea Foods (P) Ltd. (2011) 242 CTR (Ker) 111.

Ss-10(23C) (VI) & 11(5): Non-specified investment & exemption:

Investment in chit fund is not one of the modes of investment or deposit of money referred to in cls. (1) to (xii) of s. 11(5) and therefore, respondent was justified in rejecting the petitioner's application for grant of exemption under s. 10(23C) (vi) on the ground that it had invested money in a chit fund in the preceding year in violation of third proviso to s.10 (23C). Priyadarshini Educational Academy vs. Director General of Income Tax (Investigation) & Ors. (2011) 241 CTR (AP) 199 .

Ss-22 & 28(i): House Property vs Business Income:

Where the let out property is not in the possession of the assessee, nor any business was done there and assessee has let out the same to others for rent, income has to be taxed under the head Income from house property. Commissioner of Income Tax & Anr vs. Saran Holdings (P) Ltd. (2011) 241 CTR (Pat) 527.

INCOME-TAX CASE LAW UPDATES

Ss-28(i) & 45: Business Income vs Capital Gain:

Profit on sale of land (though not registered in his name) received by the assessee from the owner of the land in pursuance of an agreement to develop his land and for spending certain amount for developing it for the owner was capital gain when there is no material to hold that the assessee was indulging in to business transaction right from the beginning. Commissioner of Income Tax & Anr vs. S. Rajamannar (2011)241 CTR (Kar) 372

S—32: A Manufacture or Production:

Activity of providing wireline logging services involves conversion of unreadable and unusable information regarding latent physical property of rocks beneath the earth's surface into scientific data through sophisticated scientific tests and calculations and further into logs printed on papers or recorded on magnetic tapes which bear a distinct character and identity from that of the primary input and therefore same amounts to manufacture or production of an article or thing so as to entitle the benefit of investment allowance to the assessee. Commissioner of Income Tax vs. HLS India Ltd (2011) 242 CTR (Del) 1.

S-37 (1): Business Expenditure:

AO disallowed commission paid by assessee alleging the same to be bogus, but the vital information that taxes had been paid by party which received the impugned commission has not been considered by the authorities below; matter is remanded. Pawan Kumar Jain vs. Commissioner of Income tax (2011) 242 CTR (Del) 45.

S-43 B: Payment within extended period

of time eligible for deduction:

So long as there is an extended period of time granted by the AO under proviso to S.139 (1) all acts done within the extended period must be deemed to have been done within the prescribed period of time as originally stipulated; no disallowances under s.43 B could be made for belated payment of sales –tax by assessee made within extended due date for filing IT returns. Commissioners of Income Tax vs. Narender Anand (2011) 242 CTR (Del) 32

Ss-44AD & 68: Presumptive Taxation & Unexplained cash credit:

Assessment being made under s.44AD the assessee was not under obligation to explain individual entry of cash deposits in the bank unless such entry had no nexus with the gross receipts and therefore no addition under s. 68 called for. Commissioner of Income Tax vs. Surinder Pal Anand (2011) 242 CTR (P& H) 61

Ss-45 & 48: Expenditure in connection with transfer:

Amount spent for rectifying the defects in the title to the property and removing encumbrance to transfer is expenditure incurred in connection with the transfer for the purpose of computation of capital gains; assessee should be given an opportunity to explain her stand as raised in her reply which could not be considered by the assessing authority, in as much as the said reply was submitted before the assessing authority only after the order of assessment came to be passed. V. Lakshmi Reddy vs. Income Tax Officer (2011)241 CTR (Mad) 364

INCOME-TAX CASE LAW UPDATES

S-57(iii): Deduction against Income from Other Sources :

Amount transferred by bank at the instance of the assessee from the cash credit/packing credit account to fixed deposits account for retaining as term deposits, is invariably not from borrowed funds but from export proceeds credited in the packing credit account and, therefore, this transaction cannot be taken as a loan availed by the assessee from the bank to make the deposit, and deduction of estimated interest cannot be allowed under s. 57(iii) in the computation of interest income. Commissioner of Income Tax vs. Dhanalakshmi Weaving Works (2011)241 CTR (Ker) 285

S-80-IA: Production & Manufacture:

Coating with oxides of noble metals on titanium metal electrode/anode bringing about a change in its character and use for making it fit for use in the production of chlorine and caustic soda in electrolytic process is 'manufacture' or production of 'article' or thing within the meaning of s. 80-IA entitling the assessee for deduction under s.80-IA. Titanor Components Ltd vs. Commissioner of Income Tax & Anr (2011) 241 CTR (Del) 255

S-80 – IB: Eligibility of certain receipts for deduction:

Transport and interest subsidies which are not directly relatable to the industrial activity of the assessee, do not qualify for deduction under s.80-IB. Payment of excise duty has a direct nexus with the manufacturing activity, hence refund of excise duty under exemption notification qualifies for deduction under s. 80-IB. Commissioner of Income Tax vs. Meghalaya Steels Ltd (2011) 241CTR (Gau) 384

S-80-IB: Manufacture:

Process involved in converting raw fish into tinned fish did not amount to manufacturing and therefore assessee was not entitled to de-

duction under s. 80IB. Commissioner of Income Tax vs. Gitwako Farma (I) (P) Ltd. (2011) 241 CTR (Del) 449

S - 80-IB: Claim for deduction:

Assessee cannot be deprived of deduction under s. 80-IB merely because he did not claim such benefit in the initial year in which he was eligible to claim this benefit. Registration of an industrial undertaking as a small-scale industrial undertaking under the Industries (Development and Regulations) Act, 1951 is not a condition precedent for treating the same as a small-scale industrial undertaking and, it is sufficient if it fulfils the eligibility criteria for being regarded as a small-scale industrial undertaking for the purposes of said Act. Praveen Soni vs. Commissioner of Income Tax (2011)241 CTR (Del) 542

S-115J: MAT & additional depreciation:

While computing the book profit under S. 115 J addition cannot be made on account of additional depreciation debited in the books for the earlier years because of change in the method of providing depreciation retrospectively. Dy. Commissioner of Income Tax vs. Farmson Pharmaceuticals Gujarat Ltd. (2011) 241 CTR (Guj) 568

S-271(1) ©, Explain. 1: Penalty & bona fide claim:

Merely because assessee, a Government corporation, claimed depreciation in the valuation of closing stock on account of deterioration of old stock and the same has not been accepted by the Revenue, penalty under s. 271(1) (c) is not leviable, in the absence of any finding that the claim of the assessee was false or that it fudged the books of account. Commissioner of Income Tax vs. H.P. State Forest Corporation Ltd. (2011) 241 CTR (HP) 413

Compiled by CA. Chhaya M Kothari

ARTICLE ON TDS

PROCEDURE TO DOWNLOAD FORM 16A FROM NSDL

Compiled by Neelam Rojani (CA Article)

As per CBDT circular no. 03/2011 dated May 13, 2011, TDS Certificates in Form No. 16A will be generated from Tax Information Network (TIN). It is mandatory for Companies and Banks to issue Form 16A from TIN to their deductees for deductions made from April 1, 2011 (F.Y. 2011-12 onwards).

Procedure to request for Form 16A

1. Login to TAN Registration Account with user id, password and TAN.
2. Request for Form 16A can be made for the TAN logged in only. One TAN cannot request for Form 16A of another TAN.
3. On successful login, under menu 'Form 16A', select option 'Form 16A File Request'.
4. Clicking on aforementioned option, screen to provide following details will be displayed.
 - a. Financial Year and Quarter for which Form 16A required.
 - b. Details of challan/transfer voucher and deductee present in the TDS statement filed for the period for which Form 16A requested. This information is for verification purpose.

5. Verification details:

- a. Login to TAN Registration Account with user ID, password and TAN
- a. If statements for Form 26Q and 27Q are filed for the period of request of Form 16A (example, request for F.Y. 2010-11, Q4), provide
 - challan/transfer voucher and
 - deductee details pertaining to any one statement.

Example: if challan / transfer voucher details are provided for Form 26Q, deductee details also should be provided of Form 26Q only.

- c. Provide details of any one challan / transfer voucher present in the non salary TDS statement.
- d. Provide details of any three distinct deductee records (PAN and corresponding deducted amount) present in the non salary TDS statement, i.e. it is not required to mention deductee details which are associated to the challan / transfer voucher provided.
- e. If distinct deductee detail record in the statement is less than three then provide available distinct combination of PAN of deductee and corresponding deducted amount.

6. Form 16A will be provided on successful verification.

7. Option to request Form 16A for one PAN or all PANs is available.

ARTICLE ON TDS

8. Two attempts within a day are provided to correctly answer the verification questions for statement required.

9. In case of two unsuccessful attempts within a day for the same period (i.e. Financial and Quarter); request for such period can be placed only on next day.

10. On successful verification, request number is generated. Form 16A is e-mailed to the user within 48 hours on the e-mail ID provided at the time of TAN registration.

11. Form 16A is provided in a text file. In case of large number of records in the Form 16A requested, the Form 16A is split in multiple files and emailed, owing to restriction of mail size at the user.

12. In case Form 16A is split in multiple files then each file is sent by separate e-mail. File is password protected. To open the file, enter TAN registration number.

Form 16A is generated in TIN on the basis of the details given by the deductor in the TDS return filed by him in TIN. Form 16A will be generated for deductee records with valid PAN (PAN present in the Income Tax Department database) in Form 26Q and 27Q

Form 16A generated from TIN has a unique six character TDS Certificate number assigned to each certificate

SERVICE - TAX
UPDATE

ONLINE FILING FOR SERVICE TAX RETURN IS COMPULSORY

Compiled by Kailesh Veer (CA Article)

The CBEC vide notification No.43/2011- Service Tax dated August 25, 2011, made amendments to the service tax rule 7 with effect from October 1, 2011, where in the provision which stated that where an assessee has paid a total service tax of Rs10 lakh or more including the amount paid by utilisation of Cenvat Credit, in the preceding financial year, he shall file the return electronically has been deleted and after sub rule (2), a new sub rule (3) has been inserted namely: (3) Every assessee shall submit the half-yearly return electronically.

With this notification now all assesses who are registered with the service tax will have to file all service tax half yearly returns electronically from October 1, 2011. This means that the half yearly return for the period April 1, 2011, to September 30, 2011 will have to be filled electronically through the ACES site of service tax as the due date for filling of the return for the period is October 25, 2011, and by then this notification will be applicable. Assessess who have not filed previous returns of service tax will also have to file the same electronically if they are going to file the same after October 1, 2011.

Hence, after October 1, 2011, based on this notification, all assesses will have to file their service tax returns compulsorily online.

Penalty for non filling of service tax return electronically will be as per section 77(2), penalty for contravention of any provisions of the chapter or rules (of service tax) for which separate penalty has not been provided shall be upto Rs10,000. This amount was Rs 5,000 till April 7, 2011.

ARTICLE

FAQs ON CREDIT RATING

Compiled by Monu Singh (CA Article)

1. What is the full form of CRA?

The full form of CRA is Credit Rating Agency.

sentation of the probability of degree of repayment risk associated with debt instruments.

2. What is a credit rating agency?

A credit rating agency is an entity which assesses the ability and willingness of the issuer company for timely payment of interest and principal on a debt instrument.

8. Are rating symbols the same across all types of debt instruments?

No. Rating symbols may vary depending on the type of debt instrument, as for example long term or short term.

3. How is a rating denoted?

Rating is denoted by a simple alphanumeric symbol, for e.g. AA+, A-, etc.

9. What do the “+” and “-” sign indicate in a rating?

Plus and minus symbols are used to indicate finer distinctions within a rating category. The minus symbol associated with ratings has no negative connotations. In fact, ratings in a higher rating category such as ‘AA-’ are stronger than ratings in a lower rating category such as ‘A+’.

4. Whether the issuer company is rated or the instrument?

The rating is assigned to a security or an instrument.

10. What are investment and speculative grade ratings?

An investment grade rating signifies the rating agency’s belief that the rated instrument is likely to meet its payment obligations. In the Indian context, debt instruments rated ‘BBB’ and above are classified as investment grade ratings. Instruments that are rated ‘BB’ and below are classified as speculative grade category ratings in which case the ability to meet the payment obligations is considered to be “speculative”. Instruments rated in the speculative grade are considered to carry materially higher risk and a higher probability of default compared to instruments rated in the investment grade.

5. What does credit rating convey?

Credit rating is an assessment of the probability of default on payment of interest and principal on a debt instrument. It is not a recommendation to buy, sell or hold a debt instrument. Rating only provides an additional input to the investor and the investor is required to make his own independent and objective analysis before arriving at an investment decision.

6. How is credit rating done?

Ratings are based on a comprehensive evaluation of the strengths and weaknesses of the company fundamentals including financials along with an in-depth study of the industry as well as macro-economic, regulatory and political environment.

7. What do the various rating symbols mean?

Each rating symbol is an alphanumeric repre-

11. Who pays for the credit rating?

In India, the issuer company pays for the credit rating.

FAQs ON CREDIT RATING

12. Who regulates rating agencies?

Credit rating agencies are regulated by SEBI. The SEBI (Credit Rating Agencies) Regulations, 1999 govern the credit rating agencies and provide for eligibility criteria for registration of credit rating agencies, monitoring and review of ratings, requirements for a proper rating process, avoidance of conflict of interest and inspection of rating agencies by SEBI, amongst other things.

13. Does SEBI have a role in the rating exercise?

No. SEBI does not play any role in the assessment made by the rating agency. The rating is intended to be an independent, unbiased and professional opinion of the rating agency.

14. Is rating a one time exercise?

No. To protect the interest of investors, SEBI has mandated that every credit rating agency shall, during the lifetime of the securities rated by it, continuously monitor the rating of such securities and carry out periodic reviews of all published ratings.

15. Why do ratings change?

Rating is an opinion based on information available at a point in time with the rating agency and expectations made on the basis of such information by the agency. However, information can change significantly over time causing the rated instruments performance to deviate from the earlier expectations thereby affecting the future repayment abilities and thus, requiring the rating to be altered.

16. What does a rating downgrade indicate?

Rating is monitored throughout the life of the instrument. A downgrade in the rating indicates that the risk of default of the instrument is higher than what was earlier pre-

dicted.

17. What kind of responsibility or accountability will attach to a rating agency if an investor, who makes his investment decision on the basis of its rating, incurs a loss on the investment?

A credit rating is a professional opinion given after studying all available information at a particular point of time. Nevertheless, such opinions may prove wrong in the context of subsequent events. There is no contract between an investor and a rating agency and the investor is free to accept or reject the opinion of the agency.

18. Do agencies rating small and medium enterprises, mutual funds, banks, non-banking financial institutions, insurance providers, infrastructure entities, etc. also fall under the regulatory purview of SEBI?

No, SEBI regulates only the agencies which are engaged in the business of rating securities offered by way of public or rights issue.

19. From where can the credit ratings of instruments be obtained?

Credit ratings assigned by the credit rating agencies to various instruments are made available by the agencies [through press releases and on their respective websites](#). The same are also available in the prospectus or the offer document of the issuer company and in media advertisements.

20. What are the common factors that are taken into account while awarding the credit rating?

Each credit rating agency may have its own set of criteria and different weight age for each component for assigning the ratings. Some of the common factors that may be taken into consideration for credit rating are

FAQs ON CREDIT RATING

issuer company's operational efficiency, level of technological development, financials, competence and effectiveness of management, past record of debt servicing, etc.

21. How can an investor know if a credit rating agency has changed its rating?

The credit rating agencies are required to continuously monitor the ratings assigned by them to a particular instrument. In case of any changes in the ratings so assigned, the agencies are required to disclose the same through press releases and on their respective websites.

22. What are the measures taken by SEBI in strengthening credit rating?

SEBI has, from time to time, taken several steps to strength the process of credit rating. SEBI directives require the credit rating agencies to be transparent and disclose to the public the information which may have a material bearing on the ratings, any sources of conflicts of interest while undertaking the rating exercise, rating methodology, rationale of the ratings, etc.

23. Why there are not common symbols for credit ratings of all agencies?

The credit rating agencies do not have common symbols because they use different rating methodologies and have different factors bearing different weightage.

24. Which are the rating agencies registered with SEBI?

Name of the rating agency	Information
Credit Analysis & Research Ltd. (CARE)	4th Floor, Godrej Coliseum Somaiya Hospital Road Off Eastern Express Highway Sion (East) Mumbai-400022 http://www.careratings.com
ICRA Ltd.	1105, Kailash Building, 11th Floor 26, Kasturba Gandhi Marg New Delhi-110 001 http://www.icra.in
CRISIL Ltd.	CRISIL House 121-122 Andheri Kurla Road Andheri (East) Mumbai-400093 http://www.crisil.com
Fitch Ratings India Pvt.Ltd.	Apeejay House, 6th Floor 3, Dinshaw Vachha Road Churchgate Mumbai-400020 http://www.fitchindia.com
Brickwork Ratings India Pvt.Ltd.	#39/2,Sagar Complex,2nd Floor Bannerghatta Road Near Diary Circle Bangalore-560029 http://www.brickworkratings.com

The why and how of 'HUMAN ASSET' valuation

Despite being an important asset for a company, human resource is an asset always ignored by accountants. With regards to assets, there is a fundamental conflict in accounting practices between human and non-human assets. Only non-human assets find a place on a company's balance sheet. Keep in mind that even intangibles like 'goodwill' are accounted for.

An asset is simply something that can generate cash / value in the future. If you go by this definition, human assets should also be accounted for the balance sheet. So why aren't human assets given their due recognition? It is because the formal definition of asset does not recognize people as 'accountable assets' for a company. According to the formal definition, an asset is a resource controlled by the entity as a result of past events and from which future economic benefits are expected to flow to the entity. Simply stated, assets are economic resources which represent ownership of value that can be converted into cash.

Human assets do generate cash for a company, but they are not owned by the company. Hence, they cannot be incorporated into the balance sheet. However, the definition and accounting practices do not make human assets any less. They still command the same value and importance for the company. Thus, there are few companies that choose to value their human asset. One example of such companies is the 2nd largest software company in India, Infosys. According to the additional notes filed with regulatory exchanges, Infosys has recently valued each of its employees at over Rs 10 m.

There are many financial models to value human assets. Infosys used the Lev & Schwartz model to calculate the value of their human resources. In the past, companies such as Bharat Heavy Electricals Ltd (BHEL), Steel Authority of India Ltd (SAIL), Minerals and Metals Trading Corporation of India Ltd (MMTC Ltd), Oil and Natural Gas Corporation Limited (ONGC) and National Thermal Power Corporation Ltd (NTPC) have also used the same model. The model uses several factors such as age, annual earnings up to retirement, retirement age of the employees & cost of capital to value the human assets of the company. However, the model ignores productivity of employees, attrition rate and training expenses in its calculation.

Conceptual thinking about valuing human resources is still developing. Accounting bodies all over the world still haven't accepted any model for valuing human resource. Hence, a company does not need to value its human assets for the purpose of external financial reporting. However, people are one of the most valuable assets for any company. No matter how good the company's business is, it is the people who steer it in a particular direction. Therefore, while making internal decisions related to human resource management, a company should consider human asset valuation. The company should look at the parameters such as return on human resource value, ratio of total income to human asset value. All these parameters give a clear picture of efficiency of human resources employed by the company.

Investors could also take human asset valuation into account when they analyze a company for investment purposes. As an investor, you should always give importance to all the 4 Ms (money, machines, materials and men) associated with a company. We believe that you should not ignore the last M which is vital for any company, especially when knowledge is the key element for the future success of any company.

Compiled by CA. Chhaya M Kothari

VAPI BRANCH OF WIRC OF ICAI NEWS

MOCK TEST

Vapi Branch has arranged for CA PCC/IPCC/Final Mock Test from 13-Oct 2011 to 20-Oct-2011

RESIDENTIAL REFRESHER COURSE, 2011

3rd Residential Refresher Course at RAS Resorts, Silvassa (5 Star Resort) in November 2011. Details of the Conference are as under:

Sr. No.	Papers for Group Discussion	Paper Writers	CPE
1	Issues in Taxation of Shares/Securities, with special emphasis on Capital Gains vs. Business Income	CA Anil Sathe	4 Hrs.
2	Case Studies on TDS payments to Non-Residents	CA Nihar Jambusaria	4Hrs.
3	Issues in Service Tax on Construction related services	CA Naresh Sheth	4 Hrs.
4	Non-Technical – Yet to be decided	Eminent Faculty	2 Hrs.

Dates: November 11, 12 & 13, 2011

Venue: Ras Resorts, Silvassa

128(P)(I), Silvassa Naroli Road, P.O.Box 38, Silvassa-396230

PUBLICATIONS AVAILABLE AT VAPI BRANCH FOR SALE

- WIRC Reference manual 2 copy of Rs 250 each
- RTP's of CA IPCC/PCC/Final
- Compilation of CA Final/PCC
- Practice Manual of CA IPCC/PCC/Final
- Supplementary CA IPCC/PCC/Final
- Study Material CA IPCC/PCC/Final
- Hindi Study material IPCC/PCC/Final
- CPT/IPCC/ Article ship Registration form

GLIMPSE OF PAST EVENTS



Vapi Branch Committee Members along with department officers for Seminar on E-TDS on 6th Sep 2011 for ICAI Members & for Banks and Insurance sector



CA. Jaiprakash Sethiya felicitating ITO Roy Abraham at a Seminar on TDS



CA. Giriraj B Laddha presenting a Mometo as a token of Thanks to ITO Dimple Mehta on Seminar on TDS



Audience at E-tds Seminar held at Vapi Branch of WIRC of ICAI on 6th of September 2011



The Suggestions & Feedback for improvement of Newsletter and articles for forthcoming newsletter are invited.

Please mail us at:

vapibranch125@yahoo.com



To,

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