he should share the costs.

If a loan was conditional on the borrower paying the taxes of the lender, this is *ribis.* This applies to taxes levied on the principal, where the borrower will be exempting the lender from paying what he owes. If, however, the lender wants the borrower to pay the taxes that the lender will incur due to the profits made on his capital, the borrower may pay them. Various approaches are offered by the poskim to reconcile this. The tax is not on the principal, but on the profits. This was money made by the borrower. The government has a right to demand tax from the one who earned it. It just so happens that the way the tax is assessed is based on the original owner of the principal, but the assessment is really based on the principal itself. Accordingly, the tax really applies to the borrower.

By this reasoning, the poskim say that the lender may stipulate that the borrower pay any taxes assessed on profit gained by the borrower business ventures. However, in our case, there is no profit. On the contrary, the entire loan is interest free. The borrower may do with it as he sees fit, and he will report any profits he makes when filing his own taxes. The government is only interested in the lender, and claims that there was interest. It is this fictitious interest that the government is taxing. In fact, neither the lender nor the borrower is gaining from this transaction. While the tax payment is no gain to the lender, it is a loss to the borrower. This is sometimes interpreted as one type of *ribis,* known as *neshech.* Had the borrower not taken this loan, he would not have incurred this loss.

If a lender loaned the money with no stipulations, but later incurred losses as a result of the borrower's actions, the borrower may pay for them. However, this is limited to losses that were caused by the borrower. In our case, perhaps the lender could agree not to collect anything if the government will not charge any taxes. Later on, if and when they do charge tax, the borrower may pay it for him. However, this loss is not the fault of the borrower. Furthermore, the lender will not agree to loan the money unless he is guaranteed not to lose out.

It seems that our case falls between the cracks. Nonetheless, on closer examination, it appears that this is not a case of *ribis.* The right that the government has to demand the tax is similar to a hold on the money to be loaned. They will not permit the lender to claim that there was no profit. As such, the tax is similar to a cost that must be paid in order to loan the money. Indeed, the lender views it in this way. He will not make the loan unless this cost is covered. Thus, it may be charged as an expense. [See Tur Sh Ar YD 170:1, Rema, 172:6 Rema, Shach, 177:8, commentaries. Bris Yehuda 9.]

In conclusion, the lender may assess this tax as a 'cost' for obtaining the loan.

Sponsored by in memory of Henrietta Silver, Yitele bas R. Shimon, *a"h*, whose *yahrzeit* is the first day of *Shavuos*, 6th of *Sivan*, R. Shimon ben R. Eliezer Blumenthal *zt"l*, whose *yahrzeit* was on the 25th of *Iyyar*, Rochel bas *Hagaon* R. Moshe Chaim Ratzker *a"h*, whose *yahrzeit* was on the 13th of *Iyyar*, and *Hagaon* R. Moshe Chaim ben *Hagaon* R. Avraham Yisachar Ratzker *zt"l*, whose *yahrzeit* was on the 16th on *Iyyar.*

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Parshas Bemidbar 5773 Vol. XVI No. 30 בס"ד

HALOCHOSCOPE

This week's question:

A relative has offered a substantial loan. The government will not believe that there is no interest on a loan this size. Therefore, the lender will need to pay tax on the imaginary interest. He will agree to the loan provided that he does not have to lose out on this tax payment. May the borrower pay this imaginary tax?

The issues:

A) *Ribis*, interest or usury

B) Third parties

C) Allowable expenses

A) Ribis

A loan is a transfer of funds for a given time. The lender gives up any claim on that money for the agreed duration of the loan. In return, the borrower agrees to give other money back at the end of the loan period. Because the lender is deprived of the usage of his money, he would like to make up for potential gains or profits he could have made during this time. The simplest way to view this is either as payment or 'reward' for the fact that the lender's money is 'idle' – that is, it is unusable by him. Or 'reward' for waiting for the money to be repaid. A more complicated view would consider the money similar to durable goods. The lender would be renting the money to the borrower. One would pay for the usage of a rented tool or animal. This could be viewed as payment for the usage or for the time. In the same way, the interest would be like paying for the usage of the money or for the time that the money is made available.

Usury, or charging interest, involves several Scriptural and/or Rabbinical violations. A rate of interest, or an amount, stipulated at the time of the loan is known as *ribis ketzutza*, fixed interest. In such cases, both lender and borrower violate directly two Scriptural *mitzvos*. In addition, they both violate *lifnai ivair*, aiding another in sinning. Each of them facilitates the other's violations. The scribe who writes up the document, any cosigners, and witnesses are all incriminated in some way. Some violations are violated from the time the charge is made, agreed, written up, signed, the time the money is handed over, or collected, and often even if the interest is not paid in the end. Stipulating includes fixing an amount or an interest rate (e.g. a percentage per day), and even, according to some, if no amount was agreed, but it was agreed that there would be some form of interest. *Ribis* applies to goods as well as cash. Once stipulated it is forbidden to collect the interest at any time, whether before the due date of the loan, at the time of payment or later. If it was collected it must be returned, with the help of a *Bais Din* if necessary.

Avak ribis, the 'dust' of usury, includes cases forbidden Rabbinically. The main type of *avak ribis* is forbidden because it resembles *ribis*. This need not be a 'visible' resemblance. If the transaction seems to have the flavor of *ribis*, or it seems to accomplish the same end as *ribis* – to compensate the benefactor for not having the availability of his own money for the duration. In *ribis she'aina ketzutza* nothing is stipulated, but a lender demands it anyhow, or a borrower pays it voluntarily. *Ribis mukdemess ume'ucheress* is interest paid before a loan is granted or after it is paid (according to most poskim, this is forbidden Rabbinically. A minority consider it a type of Scripturally forbidden ribis.) *Derech mekach umemkar* is a purchase or sale based on interest. A merchant may not take an advance payment for goods as yet unavailable, if he grants a price reduction. He is rewarding the purchaser for the use of his money in the interim, like a loophole-type loan with interest. The Talmudic conclusion is that one who made forbidden gain through *avak ribis* may not be compelled to return it.

Mechzi keribis is a commercial transaction that does not involve *avak ribis*. However, money, rather than goods, were exchanged, and there was a net gain. For example, one put down money for goods when they were cheap, intending to take delivery in the expensive season. Then, he did not take delivery, but sold them back at the higher price, gaining the difference. This Talmudic debate has varying rulings by the poskim.

Ha'aramas ribis, trick usury, includes cases where the equivalent of the interest is earned quickly, by means of a double-deal. A lender loans goods to a borrower, worth the value of the requested loan. He then buys back the goods at a lower price from the desperate borrower. He will still be paid in full for his original loan, but has contrived to save himself money through the loan. This is forbidden Rabbinically. A borrower may not do favors for the lender that he would not normally do, nor even greet him specially. Some consider this *ribis mukdemess*, since it is done at times other than the payment.

In our case, the lender has no wish to collect interest at all. However, he does not want to be penalized for making the loan. The money that will be collected is not even the interest. It is assessed on an assumed profit from a transaction that never happened, but cannot be proven such. The lender will make no gain from this loan, and the loss he is saving himself from through the borrower's payment would never have arisen had he not loaned the money. On the other hand, he is openly stipulating this payment as a condition for the loan. Is this *ribis*? Is there a way around the problem? [See Baba Metzia 60b-75b etc., Poskim. Tur Sh Ar YD160-161 163:3 175:6 etc., commentaries.]

B) Third parties

The Torah only forbids *ribis* paid by the borrower to the lender. A cosigner or guarantor is also included in this. He is in place of the borrower. The Talmud provides for an unrelated third party making a payment. A third person may pay a lender to loan the money, provided that the borrower does not pay it to the 'agent'. A borrower may pay a third party to convince a lender to loan the money, provided that the lender does not receive any of it. In such cases the third party is acting on his own, either taking payment for effort, or paying for a favor. He is neither the lender nor the borrower.

In some situations, there is no technical exchange of funds, but the *halachic* status is determined to be the equivalent. In such cases, the lender and the borrower make a face to face agreement, but the material benefit does not pass from borrower to lender. *Din arev* is a case where one tells another to give money to a third party in exchange for personally obligating himself. For example, a guarantor will obligate himself to a lender if the lender loans the money to his friend. *Halachically*, it is considered as though the guarantor received something from the lender in return for his agreement to indebtedness. *Din eved kenaani* refers to one person paying another for agreeing to give something to his friend. A Canaanite slave can gain his freedom when a third party pays his master on his behalf. Thus, in a *ribis* situation, it is possible that a third party will be of no help. In fact, it could even be considered *ribis ketzutza*. Suppose a lender tells a borrower "I will loan you the money interest free, if you give a certain sum to someone else!" The lender receives nothing direct in return. However, the benefit of his instructions being obeyed is considered a personal gain. The poskim point out that there need not necessarily be any actual purpose in the instructions. For example, some say that even if the lender asks the borrower to throw money away, he has made a stipulation for his distorted benefit.

The borrower may not initiate the same type of negotiations either. For example, a potential borrower may not approach a lender and offer to donate to his favorite charity if the lender gives him the loan. [Some poskim debate whether a charity is also included, but the consensus is to steer clear of this controversy.] In our case, the lender basically makes the loan contingent on the payment of the 'tax' to the government.

The Torah permits paying interest to a non-Jew. However, if one Jew borrowed money from a non-Jew for interest, then loaned the money to a second Jew, the first Jew may not charge the interest, even though he plans to pass it directly back to the non-Jew. It is as though the first Jew is now the lender. [The only permissible way to do this would be to legally transfer the money back to the non-Jew before the second Jew makes the loan.] Even if the second Jew offers to pay the money directly to the non-Jew – for the first Jew, it is forbidden. Thus, it does not help to claim that the first Jew is simply passing on his own cost or his own loss. In our case, the interest/'tax' is being paid to a non-Jew, but the government is not the lender. The money never belonged to the government. Thus, the borrower is not paying an interest payment on behalf of the lender. In fact, the lender never owed it before, and really does not we it now either. However, it is a payment made on his behalf in order to negotiate the loan. [See Kidushin 7a Baba Metzia 69b 70b-71b, Poskim. Tur Sh Ar YD 160:13-16, (DRK'T) commentaries.]

C) Expenses

Thus far, we have discussed charging for the use of one's money, a loss of potential profit, or a charge for waiting for the money to be repaid. This money is not connected to the actual loan. It is a way for the lender to gain indirectly, or to avoid indirect losses. It can sometimes happen that one incurs costs associated with the actual loan. These could be slightly indirect, but would never be incurred if not for the loan. For example, to ensure repayment it is always advisable to draw up a loan document. This can cost the lender, a fee for the scribe, the witnesses, attorneys, registering it, and the materials. This cost is charged to the borrower, though it benefits the lender. A direct expense could be the cost of withdrawing money from a fund in order to loan it to the borrower, that must be paid up front. It might be money that is in a distant location that needs to be transported. If the lender was anyhow going to incur these costs for himself without this loan, he may not pass them on. He may not claim that since the borrower is also using the money,