

HALOCHOSCOPE

This week's question:

If an employee has money deducted from his paycheck to be placed in a retirement fund, does he give *maaser kesafim* on it now or later? Similarly, if the employer adds to the fund as an incentive, is this included in his gross salary for *maaser* purposes? If an educational institution reduces the tuition fees for employees, does this need to be counted towards the gross income for *maaser*?

The issues:

- A) *Maaser kesafim***
- B) Principal and earnings; expenses and deductions before separating *maaser***
- C) *Mishtarshi*, non-monetary benefits and services that have a monetary value**
- D) Deferring the separation until one actually receives it**

A) *Maaser kesafim* [from Halochoscope XIII:15.]

Maaser means a tenth or tithe. The Torah obliges the farmer inside *Eretz Yisroel* to tithe his crops and the new season's livestock. *Teruma*, a small percentage, is given to the *Kohain*. *Maase*, a tenth or tithe, is given to the *Levi*, and a second tithe is separated from the remainder. The agricultural cycle is seven years, culminating in *shvi'is*. In the third and sixth years, the second tithe is given to the poor. In the other years, it is kept by the tither. This is later taken to *Yerushalayim* and eaten there, mostly as an offering. *Maaser Kesafim*, tithing one's money, is modeled on crop tithes, but linked to the *mitzvah* of *tzedaka*, charity. Hence the term *maaser*.

Tzedaka is a Scriptural obligation, positive when giving, and negative when refusing, despite its appearance as a voluntary act of kindness and generosity. It is forbidden to refuse a plea for alms. Communal authorities may force individuals to donate, assess an amount, graduated by means, and seize goods or property as collateral. There are basically four types of *tzedaka*: (i) When a poor person asks for alms one must provide him with basic needs; (ii) Communal compulsory collections for the community poor, *kupah vetamchuy*; (iii) *Nidrei tzedaka*, a self-imposed undertaking, to gain merit for the sick, for the souls of the deceased or in repentance or thanksgiving; and (iv) *Maaser kesafim*.

There is a *Midrashic* link between crop tithes and money tithes. This indicates a definite obligation, Rabbinical at least. According to some, this indicates a Scriptural obligation. The poskim find further basis for the obligation in the Talmud, based on a vow undertaken by *Yaakov Avinu*. He promised to 'give back' a [double] tenth to Hashem, i.e., a fifth of all that Hashem would provide him with. The most obvious interpretation of this Talmudic passage is a Rabbinically mandated maximum limit on the amount one should spend on *mitzvos* in order to avoid dependency on *tzedaka*. This is known as *takanas Usha*, based on the location of Sanhedrin when it was instituted. In the process, we also

derive the praiseworthiness of 'giving back' a portion of one's earnings to Hashem. The simple outcome of this would be a Rabbinic obligation to donate one tenth of one's income to *tzedaka*. For those who wish to perform the *mitzvah* in the best possible manner, one fifth would be best. [Some suggest, the optimum manner is to designate a tenth to *tzedaka*, and a second tenth as a free loan fund.]

The reference to Yaakov's vow, and its terminology, indicate a voluntary undertaking in time of need. Accordingly, a third view considers *maaser kesafim* neither Scriptural not Rabbinical, but a *minhag*, recommended positive practice, or a binding voluntary undertaking. Some poskim suggest that if one has not yet begun the practice, he should announce that he is doing it *bli neder*, without undertaking a vow. He may also stipulate how he plans to use the tithed money. He could reserve the option to use it for *mitzvos* other than *tzedaka* for the poor, provided the *mitzvos* are not outstanding obligations. The most ideal would be to set aside a fifth, using one tenth for *tzedaka* and the second tenth for a free loan fund. [See Vayaitzai 28:22 Re'ay 15:7-11. Kesubos 50a, Sh. Mk. 67b Taanis 9a, Tos. Pe'ah 1:1, Shnos Eliyahu. Bava Basra 8a-b, Poskim. Sefer Hamitzvos A:195 L.S.:232. SeMaG A:162 LS:289. Tur BY Sh Ar YD 247 248:1-2 249:esp.1 258:1 13 259:1 305:3 5 331, commentaries. Noda Biyehuda I:YD:73. Tshuvos Chasam Sofer YD 229. Igeress Hagra. Ahavas Chesed 2:19, etc.]

B) Keren and revach

A "tithe" should be separated and designated. Some consider the act of separating it a *mitzvah* in its own right, apart from the act of donating it to the recipient. Capital is tithed when it is received. Earnings and profits are tithed after some expense deductions. Many people donate *tzedaka* as the need arises, and keep an account of the amounts. At the time of donating they have the intention to consider it *maaser*. They then determine whether they are up to date, over their limit or owe some more. It is practical to designate one time in the year to keep track of the accounting process. Crops and newborn animals are tithed according to the season, and the year. Money need not be treated this way, since it does not have a seasonal or yearly cycle. However, one's income and losses are indeed determined for the year – at *Rosh Hashanah*. For this and other reasons, some prefer to use *Rosh Hashanah* as the accounting time. Others prefer to use the tax season (also "New-years"), as they usually calculate charitable donations then anyhow.

In regard to crop tithing, an exact tenth must be separated. Guesswork is insufficient. The reasons for this do not necessarily apply to money tithing. Nonetheless, one should keep account and try to be as exact as possible. Even those who do not link *maaser kesafim* to crop tithing agree that it is meant as a fixed proportion. As mentioned, the consensus is that one may donate as needed and balance the account on an anniversary date. Surplus may be donated the following year, and overpayment may be deducted from the account of the next year.

Maaser is tithed from all income, including earned income and inheritance. The principal of an investment is tithed immediately when it comes into one's possession. Interest or profits are tithed when they are earned. The interest is not included in this calculation, since it has already been tithed once. Money need not be tithed more than once by the same person. Gifts of money must usually be tithed, with some exceptions. Gifts of

material goods are debated. Some say that they need not be tithed as income. Others maintain that they should be tithed. However, some of these poskim suggest that they need not be sold to generate cash so that they can be tithed. Thus, if one received a gift worth one hundred dollars, if he had to sell it to give the ten dollars *maaser*, he would not have the gift. Rather, he would be left with ninety dollars in cash. This defeats the purpose of the gift. If he has cash to substitute for the *maaser*, this view would say that he should put those funds towards the *maaser*. Otherwise, he may use the gifts indefinitely. When he finally sells them, he should tithe the money he earns on them. If indeed, one chooses to tithe their value, the poskim debate how they should be valued. They might have a lower value to the recipient than to the giver. Some maintain that a gift that one would otherwise have bought must be tithed according to the value it has to the recipient. It saved him from the amount of money he would have spent. This counts as income. If he would not have bought it otherwise, he need not tithe it. Others maintain that he should tithe it according to the benefit he personally feels. How much would he have spent on it had he been offered it as a bargain? There is also a question about a gift that is given with specific instructions or conditions to be followed by the recipient. In this case, though the current user of the property is not the one who tithed it before, the conditions made by the giver render it somewhat still held by him. Since he already tithed it before giving it, the recipient need not tithe it again. In addition, the recipient might not have the right to violate the terms of his gift. This issue arises with dowries and allowances.

In calculating earnings one usually considers his net gain as profit, and deducts expenses. Thus, until all expenses have been paid, the income is not ready to be counted and tithed. However, not all deductions are truly expenses. Overhead costs could be considered expenses, as are the costs associated with employing help and advertising. Taxes, personal expenses and other surcharges might not qualify as expenses. Some of them are the cost of doing the business. Others are a tax on the resulting profits. These cannot be considered a cost before calculating net gain for *maaser* purposes. [See Refs to Section A. Yerushalmi Peah 1:1 Yevamos 6a Nedarim 48a Baba Metzia 78b, Poskim. Tur Sh Ar YD 240:15 248:6 249:1 253:12 331 CM 241:5, commentaries. ShYaabetz I:6 IgM YD II:112. Tzedaka Umishpat 5:4-5, notes 23-29.]

C) Mishtarshi lei

Just as expenses can be deducted, benefits can be added to the net income. We mentioned the debate on gifts for which one would have otherwise paid, and calculating the personal benefit. Employers and their employees prefer benefits as part of a salary due to the general accounting issues. Usually, the interests of both are not compatible. Furthermore, regulations limit the type of package. Thus, the actual benefit might be different than the dollar amount. For example, a family might really need a different type of health benefit package than that offered or allowed by the employer. One might prefer or need a different type of retirement fund. Specifically in an educational institution, the child might do better in a different institution. People and institutions have different priorities when it comes to budgeting. A different institution might use a different payment scale. Even at the same institution, the arrangement might have been different if the parent was not employed there. In these cases, the issue becomes whether to include that benefit at

all, and if so, whether to count its full value. To add a twist, a parent might be teaching his or her own children. This is his own obligation, for which he is not paid. Tuition is paid to employ another teacher as his agent. He would charge other parents, but teach his own children free. An independent teacher makes an exchange arrangement with teachers of his other children. This complicates accounting earnings. Institutions base wages or tuition on the number of children in the entire institution. Accordingly, in one sense, the parent is being asked to take a wage reduction. Moreover, in a sense, by subsidizing the tuition of the children, the institution could be viewed as giving a gift to the children themselves. In that case, the parents never received the money as personal income.

To resolve all of these issues, one follows a simple rule. Benefits that save him an out of pocket expense that would not be deductible count towards his income. This is calculated by the amount he would have spent or the amount of the benefit if there is one, whichever is less. If the employee can claim that he would normally or ideally not pay for this, but do it himself, he may deduct the amount from his income. If it is no fixed amount, but a general benefit, he may not claim the value as a deduction. [See Refs to earlier sections. Maaser Kesafim (Bronstein) 3:50-53, notes.]

D) Deferring maaser

Those who require separation of *maaser* on gifts or on goods do not require separating from anticipated income that has not materialized. What about income that is invested in the name of the employee? This comes in two forms. Income is earned but withheld from the paycheck. Additional amounts are paid by the employer. In some cases, the employee will receive the income within his *maaser* accounting period. In others, he will not receive it, but it might be placed in an account in his name. The issue is that the poor who depend on this money might have a claim on the employee. They cannot legally pursue it, but the employee would have a personal obligation to separate and distribute it.

The *halachic* considerations here include: *Rauy*, in which guaranteed income has not yet materialized or has not yet been received; inheritance before its division is also not fully in possession of the heirs; on the other side, provisions are made due to *pshia*, possibility of forgetting later on, when the time comes to separate and distribute. Thus, the poskim do not require one to separate *maaser* on long term investments before they materialize, unless dividends are not reinvested. However, it is preferred. If deducting from the principal and the interest can become overly complicated, the poskim recommend waiting until it is taken as payment. Thus, in the case of a retirement account, it would be better to tithe the full amount as it is received incrementally after retirement. This will be better for the poor in the long run. [See Maaser Kesafim (Bronstein) 3:27-30, notes.]

In conclusion, the entire amount of the retirement fund is counted as salary, but one should wait to separate it until he receives the payments. Tuition benefits count as income, unless the employee would not have otherwise spent the money on them.

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