Parshas Vayechi 5770 Vol. XIII No. 15 בס"ד

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This week's question:

Someone is awarded a settlement for damages that is regulated. The amount paid according to the code turned out to be more than the value of the damage. Is there any obligation to pay *maaser kesafim*, monetary tithe? After an accident, apart from medical expenses, payments are made for lost work and wages. Other payments are made for personal injury. Are any of these considered income for *maaser* purposes?

The issues:

***A) Maaser kesafim*, money tithing**

***B) Keren* and *revach*, principal and profit**

C) Returned property

A) Maaser kesafim

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 by the poor, and communal authorities may force individuals to donate. They can 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 vow, undertaking, to gain merit for the sick, the souls of the deceased, 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

Being a tithe, it 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 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, 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 that 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:12. Tzedaka Umishpat 5:4-5, *notes 23-29*.]

C) Lost or stolen money that is returned; applying it to our case

A major manual on ethical behavior teaches that when stolen money is returned, it must be tithed. The presumption is that the owner had already despaired of getting it back. When he receives it, it is like fresh income. This is cited in *halachic* discussions. They include collecting a delinquent loan, insurance payments and other forms of compensation. Basically, if one had given up on the money, it is considered newly acquired.

In our cases, one would need to examine a few areas. How expected is the insurance payment? What is it being paid for? Is this something that was lost, but was not given up on? May the insurance premiums be counted as expenses, and if so, does the later payment constitute profits? Is the difference between the cost of the item and the insurance payment a profit? Are the payments for compensation considered new income?

The standard payment by an insurance company is for the damage. Often this is paid by the company covering the person who caused the damage. It could also be paid by one's personal insurance company, based on the following theory. The insurance company hopes that nothing is damaged. If it is damaged, even by the owner, the insurance company pretends that it was responsible, and pays. In return for this pseudo-guardian-

ship, it charges a fee. This is calculated to be worthwhile for the company to undertake the risks. In many cases there is a code that binds the insured to pay the insurer premiums to cover the standardized replacement value, regardless of how cheap it was. From the perspective of the insured, he has made a profit, as though he sold the item. However, is the payment necessarily worth this 'profit' to the insured? One does not need to pay *maaser* on payments for damaged property. This is based on the principle that one need not tithe something twice, and the damaged party never despaired of his compensation. If he made a profit, he should have to tithe the profit. If the item appreciated in value, but incurred expenses on the way, a calculation may be made to determine whether the net gain is indeed a profit. In summary, it is likely that the 'profit' in the payment must be tithed. The basic payment need not be tithed, unless it was won in an unexpected award.

Premiums are like paying a guardian. Sometimes, they are paid out of choice. In some cases, the law requires that one pay a basic premium, and people may choose to pay for better coverage. These are part of the price of personal ownership. The poskim debate whether one may deduct household expenses before calculating net income for *maaser*. Assuming that one who can afford to should not deduct them, neither of these premiums may be deducted before *maaser*. Nor should they make the payment into a windfall profit, that would be liable for *maaser*. Therefore, when calculating the 'profit' in the payment made for the damages that was amount to more than the original cost, one should not be allowed to deduct the premiums. However, since the premiums were calculated by assuming the item was worth more, some of the premium was already payment towards the extra insurance collected. This would involve a complicated calculation. Perhaps one may make is easy by calculating the differences in the premiums, and then deducting that directly from the 'profits'. Since the owner never wanted to pay this extra premium, it can be considered expenses toward his 'profit'. This is the same as insurance payments on one's business inventory. The poskim maintain that they may be deducted as an expense, similar to paying a watchman. In many such cases, by the time the insurance is collected, the profits have been canceled by the additional amounts of the premiums.

Payments for lost work and wages are the same as wages. They are income. In fact, the are income without even working. Rather, the insurance compensates for this work as though it was done, because it accepted liability for the loss. Payments made for personal injuries are also income. They do not replace damages or losses. [See Sefer Chasidim 144. Maaser Kesafim-Domb 2:6, Maaser Kesafim-Bronstein 3:17 18 44-47 13:23-26 *notes*. Yaabetz 1:6. Tzedaka Umishpat 5:6-8 *n37*.]

On the Parsha ... *Binyamin ... in the morning he shall eat some of the spoils, and in the evening he shall divide the spoils ... [49:27]* The commentaries discuss the difference between morning and evening, eating and dividing. *[See Kli Yakar etc.]* Perhaps, before dividing one's earnings to others, he must first take care of his own needs, such as eating. Or perhaps, the small amount the wolf eats in the morning refers to his 'payment' for his efforts. After deducting this expense, he can then count his profits. He can then divide his money to distribute it to others.