D) Disclosure; genaivas daas

Assuming that a landlord must tithe rent, he might want to add it to the rent, to feel that he is fully breaking even. May he represent his charged rent as 'covering costs'? In his own mind, the entire amount charged is being used for costs. If the renter would see a breakdown of the amount, he might not see the additional 11% as a cost. Indeed, it looks like one who figures his pre-*maaser* income as the cost of any purchase, since he needed to make that amount of money to pay for it! Furthermore, to say that the landlord will not be left with any gain is also not fully true. While he will have no net financial gain, he will gain the benefit of the *tzedaka.* Apart from the spiritual gain, he has *tovas hana'ah*, the benefit of using his own discretion in distributing it. The Talmud debates whether this has real value, based on a service fee that could be assessed by an agent who works to raise the money for the recipient, or the benefit of a promotional gift to the donor.

The issue involves *genaivas daas*, misleading or misrepresenting another by concealing information. This is distinct from *ona'ah*, where one misrepresents the value, or *ona'as devarim*, where one exploits another person's situation verbally. *Ona'as devarim* would apply if the renter is led to believe he is getting a bargain. In our case, since the landlord does not itemize the costs, the renter is simply being asked to pay a fair price. This is more like a form of deception, literally stealing the other person's mind. The general rule is, if the other draws his own conclusions, the one presenting the information is not liable. If the other makes the expected assumptions based on what he is told, it violates *genaivas daas*. Even if there is no direct attempt to deceive, but circumstances are made to appear differently than they truly are, the issue arises.

The landlord may say something like: "I am not making any profit on this. But I am not losing either." The normal understanding of profit is to gain money. After the rent is broken down, it will be clear that there was no actual profit. Adding the line about loss will give the renter the opportunity to draw his own conclusions. When he realizes that the landlord saved on his own expenses, he will accept this as a viable meaning of that line. [See Baba Metzia 58b Chulin 94a, Poskim. Tur Sh Ar CM 228, commentaries.]

In conclusion, one need not tithe food-stamps. A landlord may deduct expenses before giving *maaser* on rent, even if there is no profit left to tithe. One who rents out part of a personal residence that he would have had expenses on without the tenant, may not deduct those expenses before paying maser. He may deduct extra expenses. If he adds the *maaser* cost to the rent, he must be careful how he represents it to the tenant.

On the Parsha ... *For the poor and the stranger you shall leave them [leket and peah]. I am Hashem, your G-d. [23:22] Trusted to pay your reward [Rashi]* Perhaps another reason that Hashem mentions His Name here is that giving tzedaka is sometimes left to the person. If he is G-d-fearing, he will give it. If not, no-one will know but Hashem. For example, there could be situations where appearances seem to show that one is not liable for *maaser.* Only the earner knows that this income really does qualify. But Hashem always knows.

HALOCHOSCOPE

This week's question:
Is one required to deduct *maaser kesafim* from food-stamps?
If one rents a house for the exact amount needed to cover his expenses of mortgage and taxes, must he tithe the income? May he add to the rent the amount needed to cover maaser, and then state to his tenant that he is covering his costs and making no profit?
The issues:

A) Maaser kesafim
B) Income included in the obligation; earmarked payments and gifts
C) Deducting expenses before calculating *maaser* on profits
D) *Genaivas daas* – what must be disclosed?

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. Maaser,* a tenth or tithe, is given to the *Levi*, and a second tithe is separated from the remainder. In the third and sixth years of the seven year agricultural cycle, the second tithe is given to the poor. In the other years, it is kept by the tither, and taken to *Yerushalayim* and eaten there. *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. Communal authorities may force individuals to donate. They assess an amount, graduated by means, and can seize 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 what Hashem would provide him with. The main 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 derive the praiseworthiness of 'giving back' a portion of one's earnings to Hashem. The outcome of this would be a Rabbinic obligation to donate one tenth of one's income to *tzedaka*. To perform the *mitzvah* in the best possible manner, one fifth is better. [Some suggest, the opti-

mum 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. Thus, a third view considers *maaser kesafim* neither Scriptural not Rabbinical, but a *minhag*, recommended practice, or a binding voluntary undertaking. Some suggest that one who has not yet begun the practice 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 they are not outstanding obligations. [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) Income included in the obligation

Maaser is tithed from all income. 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 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 a question about a gift given with specific instructions or conditions to be followed by the recipient. 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 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. It also arises with regard to some scholarships and government programs. They are intended to serve a specific purpose, to comply with the wishes of a donor or with the conditions of use of public funds. Therefore, one could not tithe the actual money. The question is whether one would really be obliged to tithe it, and would therefore need to substitute it with other available funds. If the conditions are such that the donor can demand their return for non-compliance with the terms, it is evidently not the property of the recipient to do with as he wishes. He cannot be obligated to tithe it.

The obligation can be further mitigated in the case of expendable gifts. While a durable gift could be used until it is sold, an expendable will be used up. If there is no immediate obligation, there can be no long term obligation to tithe it when it is sold. The poskim address some types of government programs. If they are earmarked or labeled, such as a child allowance, it depends on the terms and conditions. If the family may use the money as it sees fit, it depends on what they decide to use it for. If they use it for general expenses it has the status of tithe-able income. If it is put away specifically to be used for the children's needs, such as to pay for things that the parents would not otherwise use their own money for, it need not be tithed by the parents. [Whether the children are required to tithe it later is a separate question. As minors, they are not obligated in the mitzvah. As adults, this would probably be considered their own capital.] Applying that to our case, the food-stamp program is quite specific in requiring the correct purchases. The agency granting the funds maintains ownership to this extent. They would give food, if it were convenient. Their intent is to make sure it is consumed by the recipients only. It should be exempt of the obligation. It should be noted that those qualifying to receive charity are usually exempt from giving charity. [See refs to section A. Baba Metzia 78b, Poskim. Tur Sh Ar YD CM 241:5, commentaries. ShYaabetz I:6 IgM YD II:112. Tzedaka Umishpat 5:4-5, *notes 23-29*. Maaser Kesafim (Burstein) 3:33 36, *notes 102 105.]*

C) Expenses

Capital is tithed in full. Profits and other income is tithed after deducting fair expenses. One may not deduct certain taxes, that are imposed after the earnings. One may deduct what was needed as an outlay or overhead in order to earn the income, including such taxes. A tenant may include the cost of his business location as an expense. According to most poskim, a householder may not include the cost of his home, or any housekeeping expenses. A landlord must buy property or pay off the loan for it, in order to rent it out. Therefore, the mortgage costs are deducted before tithing the rent income. If the owner pays other monthly costs, such as taxes, maintenance and utilities, which are then passed on to the renter, these may be deducted from the profit coming in the form of rent. Thus, if the rent covers only the expenses, the landlord need not deduct maaser.

If the landlord is using this rent to offset the costs of his own home, such as renting a room to a non-family member, the issue is more complicated. This is not an income arrangement, like a multiple family house. The rent is not being earned to cover a business outlay, but to cover home expenses. The homeowner might claim that he is not using the space personally. Therefore, the costs involved should be deducted from any profit he gains. If he calculates the costs of that amount of space as a proportion of his utility, tax and mortgage bill, he can arrange that it will not earn him more than cost. However, he really is gaining, by saving himself the 'wasted' costs on the space that he does not need to use himself. This is known as *mishtarshei,* gaining by saving an expense. Usually, it refers to someone paying a creditor on behalf of a debtor. In other *halachic* situations this can be considered income, especially when it is the stated intent. Even if he were to receive this as a gift without asking, he might even need to tithe it. Certainly, if he asks to be paid this expense saving amount, he should tithe it. However, he need not include the entire amount as income. He may deduct what he feels the tenant adds to the costs of the home, such as extra utility costs and some maintenance due to wear and tear. He can calculate utilities by checking water bills etc. Wear and tear would need to be evaluated by someone with a little more expertise, as it is subjective. [See Kesubos 108a Gitin 44a Baba Metzia 65a Chulin 131a, Poskim. Tzedaka Umishpat 5:5-8, *notes* 27 33 etc.]