

HALOCHOSCOPE

Congregation Shaaray Tefillah, Pittsburgh, PA

This week's question:

Someone gives *Maaser Kesafim*, a tenth of his earnings, to Tzedakah. A needy cause has arisen, and he would like to donate money towards it. However, he has not yet earned the money. May he ask a friend to lay out the money on his behalf and repay his friend later?

What are the issues?

- (A) What is *Maaser Kesafim*?
- (B) The *Hafrasha*, separation, of the *Maaser* from the whole.
- (C) *Sh'lichus*: Does agency work in this case?
- (D) *Areiv*, a loan guarantor.

(A) *Maaser Kesafim*

We are commanded in the Torah to tithe our crops and give those tithes to the Kohen, to the Levi and to the poor. There is another obligation, linked to the mitzvah of Tzedakah (charity) to tithe our money and give it to the poor.

The basic obligation of Tzedakah is *Mideoraisa*, having a specific positive and negative commandment. [See *Sefer Hamitzvos Asei* 195, *Lo Sa'ase* 232; *Semag Asei* 162, *Lo Sa'ase* 289, etc.] There are basically four types of obligation. 1- When a poor person asks for alms, one must provide for his basic needs. 2- Communal obligations, the collections of "Kupah Vetamchuy" to feed the community poor. 3- Self-imposed "Nidrei Tzedaka" - vows taken as a part of one's repentance, etc. and, 4- Tithing - *Maaser Kesafim*.

It is with this fourth category that we are concerned here. The basis for this obligation can be found in the Talmud [*Kesubos* 50a] based on a vow taken by Yaakov Avinu [Vayetzei 28:22] to give back to Hashem a double-tenth, i.e., a fifth, of all that Hashem would provide him with. The most obvious interpretation of this passage in the Talmud is that it is a Rabbinically mandated maximum limit to the amount one should spend on Mitzvos to avoid dependency on Tzedakah. However, we also derive from here the praiseworthiness of "giving back" a portion of one's income to Hashem. It is further supported by a Midrash [cited in *Tosafos Taanis* 9a] linking the tithing of money to tithing one's crops. Thus, there is apparently a Rabbinic obligation to give one tenth of one's earnings to Tzedakah, and a fifth, *Chomesh*, for those who wish to perform the Mitzvah in the best possible way. There is another opinion that it is *Mideoraisa*, and yet another opinion that it is neither *Mideoraisa* nor *Miderabanan*, but a *Minhag*. The Chafetz Chaim suggests that before beginning the practice of separating and giving *Maaser Kesafim*, one should state that it is *Bli Neder*, and reserve the option to use it for non-obligatory

Mitzvos such as buying Sefarim for loan to the public, as well as for Tzedakah. Further, if one wishes to adopt the practice of Chomesh, one should use one tenth for Tzedakah and the second tenth for a *Gemach*, a free-loan fund. [See Kesubos 50a, Shita Mekubetzes. Taanis 9a, Tosafos., Bais Yosef, and Shulchan Aruch Yorch Deah 249, Buir Hagra, Aruch Hashulchan, Pischei Teshuva. Noda Biyehuda Y.D. 1:73. Teshuvos Chasam Sofer Y.D. 229. Yoreh Deah 331, Bach and Taz. Shnos Eliyahu Pe'ah 1:1. Igeres Hagra Ahavas Chesed 2:19, etc.]

(B) The Hafrasha

According to most opinions, Maaser Kesafim requires a Hafrasha in the same way as a crop tithe does. There is an opinion that part of the general Mitzvah of Tzedakah is also the act of separation. All capital must be tithed upon receiving it, including money received as a gift. With regard to profits, there are a number of ways they can be calculated: either as they come in piece by piece, so that one would separate the Maaser as soon as he earned the income; or only after one has earned all the profits or income from a particular project, which could be years; or on a yearly basis similar to tithing one's crops. The consensus of the Poskim is to separate the Maaser from the total net annual income having allowed certain expenses and other deductions. Although Erev Rosh Hashana is suggested, any arbitrary point in the year may be used as the anniversary date for accounting purposes. [See Yerushalmi Pe'ah 1:1. Sh. Ar. Y.D. 249:1. Pischei Teshuva 1, etc.]

Following this practice would make it impossible to give Tzedakah before the end of the year. Moreover, when tithing crops, one may not estimate a tenth; rather one must measure a tenth exactly. This could make things difficult with regard to Maaser Kesafim. However, the reason one may not estimate crop Maasros is that some *Tevel*, untithed produce, and/or Terumas Maaser, which may only be eaten by a Kohen, would be mixed in with the permissible remainder, the *Chulin*. This does not apply to money. Another limitation to crop-tithing: that one may not tithe unharvested produce using cut produce, is also not applicable to money. Therefore, it is generally agreed that one may donate money during the year as Maaser and keep a record of the donations. At the end of the year, one can then add up the donations and income to check that enough Maaser was given and make up any difference then. In the event that one overspent the allotted ten percent towards Tzedakah, some authorities rule that one may carry it over to the account of the following year. [See Teshuvos Maharil 54. Pischei Teshuva 249:1.]

In our case, therefore, it is certainly possible to apply a contribution towards Maaser even if it is made before the full amount is earned if the money will be earned in the same accounting period. If it will be earned in the next accounting period, it might be applicable, but if it is given as part of projected earnings more than a year's hence, it is highly questionable if it can be carried over. It is probably better to consider it at the outset as a loan to Tzedakah with the provision that payment may be collected from one's Maaser money, then to actually separate the Maaser when the income is earned, and keep it as payment. According to some authorities, it is also necessary to appoint a *Zocheh*, an independent receiving agent for the beneficiary, and then take it back from the Zocheh as payment. [See Sh. Ar. Y.D. 257:5. Rema, commentaries and Poskim]

(C) Sh'lichus

However, in our case, the would-be contributor does not own any money

yet, and the actual Maaser is being advanced by another party. This poses a problem regarding Hafrasha, which is usually done for Maaser of crops by removing some of the produce from the rest. Even if we assume that Maaser Kesafim is different, may one go so far as to use someone else's money? Actually, in the case of the Terumah tithe, one may tithe someone else's produce using one's own produce, possibly even without his knowledge and certainly with his consent. In this case he is acting as his Sh'liach. Usually we understand a Sh'liach to be acting as an agent using the money of the *Ba'al* - the person in whose place he is acting. However, we do find that one can appoint an agent to use his own funds in a number of cases. Thus, in our case, if the contributor directs his friend to give the Tzedakah on his behalf, he has appointed him a Sh'liach for the Hafrasha. [See Nedarim 36b, Sh. Aruch Y.D. 331:30. Buir Hagra 73. See Kesubos 70b.]

(D) Areiv

There is one other Halacha that can be applied here to allow this particular transaction. An Areiv is a loan guarantor who is *Meshubad*, Halachically bound to repay the loan in place of the borrower. How does an Areiv obligate himself for repayment? A borrower, by accepting a loan from lender, creates a Shibud, Halachically obligating himself to pay the debt. The Areiv, however, received nothing from the lender. The usual explanation is that we consider the money given by the lender to the borrower, on the guarantee of the Areiv, as if it was given to the Areiv first, who in turn gave it to the borrower. In this way, by undertaking to back the loan, the Areiv effectively borrowed the money himself, creating a Shibud. This would mean that, in Halachic terms, the money belonged to the Areiv as some point. Thus, the principle of Areiv is used elsewhere where one party in a transaction instructs a third or middle party to advance money to his counterpart, to say that it is as if the first party received it from the middle party. An ideal example of this is *Kiddushin*, the marriage ceremony, where a man must give a woman money or a ring to effectuate the Kiddushin. If the woman asks the man to give the ring to a third party, since he gave it on her word, she is an Areiv, and is considered to have actually received it first, so, although she received no ring, the Kiddushin is valid. [See Bava Basra 173b. Kiddushin 7a commentaries and Poskim.]

In the same way, this principle can be applied in our case. As we mentioned, there is a problem with the Hafrasha of the Maaser because the Maaser money does not belong to the same person who will eventually be earning the total from which it is separated. Now we can justify this method of Hafrasha: If the contributor were to borrow the money, making it his own, he would certainly be able to use it towards his Maaser. Now, with the principle of Areiv, it is as if he did just that. When his friend gave the money to Tzedakah on his word, he became an Areiv.

In summary: The would-be contributor may indeed ask someone else to donate the Tzedakah and consider it as his Maaser. If this is Maaser from the projected income of a few years, he should consider it a loan to Tzedakah. He should be very clear at the time that he wishes to collect his repayment from his own Maaser, which he will still need to formally separate when he earns the money. To fully fill the Halachic requirements, he should also first give it to an independent Zocheh to acquire it for the Tzedakah.

ANNOUNCEMENTS

SCHEDULE:

SHABBOS MINCHA	8:05 PM
SHACHARIS SUNDAY	8:00 AM
SHACHARIS MONDAY - FRIDAY	7:00 AM
MINCHA SUNDAY - THURSDAY	8:20 PM
CANDLE-LIGHTING BAMIDBAR	8:17 PM
PLAG HAMINCHA -earliest time for candle-lighting	7:04 PM
MINCHA EREV SHABBOS BAMIDBAR	7:00 PM

SHIURIM:

GEMORO MAKOS	SUNDAY 7:15 AM
HALACHA B'IYUN	MONDAY 9:00 PM
HILCHOS SHABBOS	SHABBOS 8:15 AM

Kiddush and Shalosh Seudos is being given by Rev. and Mrs. Yisroel Weiss in memory of their family members, the Kedoshim who were martyred in the Holocaust, whose Yortzites are this week. Hashem Yinkom Damam.

This issue of HALOCHOSCOPE has been sponsored by Rabbi Yosef Eisen in memory of his father, Rabbi Dovld ben Efraim Yehoshua, Zichrono Livrocho, whose Yortzite was on the 19th of Iyar.

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Any and all comments and suggestions are welcome and can be addressed to :
Rabbi Shimon Silver
Congregation Shaaray Teffillah
5741 Bartlett Street
Pittsburgh, PA 15217