

HALOCHOSCOPE



This week's question:

Someone has a choice between two child care services. One service has better features and is cheaper. The other provides less than the ideal for their child and costs more. The parent is personally familiar with the financial hardship of the provider of the more expensive service. Should the poor person be supported? Assuming the more expensive service is preferred, may *Ma'aser* money be used for paying the difference?

The issues:

- A) *Ma'aser Kesafim*, tithing one's income
 - B) *Vehechezakta Bo*, the *mitzvah* to help a person struggling financially
 - C) Paying for personal needs with *Ma'aser*
- A) *Ma'aser Kesafim*

Maaser means a tenth or tithe. The Torah obliges the farmer to tithe his crops and new livestock. It is given to the *Kohain*, the *Levi*, the poor. *Maaser sheini* is kept by the tither, and 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. *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*.

The basis for the obligation is found 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 simple interpretation of the passage is a Rabbinically mandated maximum limit on the amount one should spend on *mitzvos* in order to avoid dependency on *tzedaka*. In the process, we derive the praiseworthiness of 'giving back' a portion of one's earnings to Hashem. It is also supported by a Midrash linking tithing money income to crop tithing. 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.

There is a view that it is a Scriptural obligation. A third view considers it neither Scriptural not Rabbinical, but a *minhag*, recommended positive practice. 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 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 (*vehechezakta bo*). [See Kesubos 50a, Sh. Mk. Taanis 9a, Tos. Pe'ah 1:1, Shnos Eliyahu. Sefer Hamitzvos A:195 L.S.:232. Tur, B.Y. Sh. Ar. Y.D. 249, 331, commentaries, Ar. Hash. Noda Biyehuda I:YD:73. Tshuvos Chasam Sofer YD 229. Igeress Hagra. Ahavas Chesed 2:19, etc.]

B) Vehechezakta Bo

The Torah says: *If your brother shall [begin to] fall and his hand shall falter, you shall strengthen him ... and your brother shall live with you.* 'Strengthen' implies that it is important to help before he falls all the way and needs to be 'picked up'. One should provide ways to stop the poor man falling to the point that he needs to ask for charity. Though written in the style of an independent *mitzvah*, it is counted as part of *tzedaka*. Rambam lists eight levels of *tzedaka*, the highest being the fulfillment of *vehechezakta bo*. Make him 'live with you' (*hachayaihu*) by sharing rather than giving.

The recommended ways to fulfill this are: giving him a gift; providing him with a free loan; forming a partnership with him; providing him with work. If the gift is given before he is impoverished, he will not be embarrassed to accept it. A loan should be with easy repayment terms. The latter two are the ideal, with utmost being the partnership. The former two cases may be paid from *tzedaka* monies, according to some poskim. The latter two involve personal gain, which may probably not be done with *tzedaka* money.

This aspect of *tzedaka* is not enforced, but is left to the individual to fulfill. Accordingly, there is indeed an obligation to do what one can when one knows of the situation. However, it is difficult to say that one who neglects it has not fulfilled *tzedaka*. He could still fulfill it on a lower level. Therefore, the parent in our question could use the cheaper service. Choosing the more expensive service due to the *mitzvah* of *tzedaka* could then be considered a highly recommended but somewhat voluntary undertaking. [See Sifra Behar 25:35. Rambam, Matnos Aniyim 10:7. Tur, Sh. Ar. OC 249:6, 251:6, commentaries. Ahavas Chesed II:21 (footnote *ke'ein*), Tzedaka umishpat 1:3185]

C) Paying off personal obligations with Ma'aser monies

As mentioned, one may reserve the option to choose how to spend his *ma'aser*. The basis for this is that not everyone considers it designated *tzedaka* money. Moreover, some maintain that it is not even a Rabbinical ordinance, but a *minhag*. Therefore, some permit using it for a *devar mitzvah*, to cover the expense of another *mitzvah*. We mentioned a suggestion that before undertaking this practice one stipulates that he only plans to do so if he has the right to use it for *devar mitzvah*. However, there are limitations to this usage.

Ma'aser money is considered *matnos aniyim*, gifts due to the poor, similar to the agricultural tithes for the poor. It is not considered one's personal fund, since it does not belong to him. He has discretion on how it should be distributed or spent in the same way that one can choose how to distribute his *tzedaka*. In fact, the regular tithes have the same quality. One may choose which *kohain* he wishes to give his *terumah* tithe, and to which *levi* he wishes to give his regular *ma'aser rishon*. There is even a debate on whether this discretion, known as *tovas hana'ah*, the benefit of cultivating favor by choosing a certain recipient, is considered a monetary asset. One might accept payment from a third party to give the tithe to a person of the third party's choice.

Since it is not totally his personal fund, the one separating it may not use it for *mitzvos* that are outstanding personal obligations. This is based on the laws of festival offerings and *ma'aser sheini*. In Temple times one had to separate *ma'aser sheini* most years. This tithe was taken to Yerushalayim and eaten there, or redeemed and transferred to money that was then taken to Yerushalayim to be spent on food. It was not to be used on other expenses. The Talmud debates whether it is still considered one's personal fund, but limited to spending on food items. The ideal way to spend it was on animals that would be offered as *korbanos shlamim*, that are eaten by the owner (except certain parts burnt on the *mizbaiach* and parts eaten by *kohanim*). There is also an obligation to offer three offerings at the festival season: *re'iyah*, *chagiga* and *simcha*. *Re'iyah* is a burnt offering, and *chagiga* is eaten as a *shlamim*. Both are obligations in their own right, while for *simcha* one need only eat meat of an offering that was anyhow offered. Thus, one may use *ma'aser sheini* for *simcha*, but not for *chagiga*. *Chagiga* is an outstanding obligation. One could not use someone else's money to discharge this obligation. The Torah instructs one to use specifically *chulin*, unconsecrated money, for outstanding obligations. *Simcha* requires a *korban* of any kind be brought, which is done anyway with *ma'aser sheini* money. Based on this, one may not spend *ma'aser kesafim* on outstanding obligations. One common case of this would be payment for one's children's Torah teachers. This is a *mitzvah*, but an obligation that one usually pays for. Paying for it with *ma'aser* would be like paying off a debt with other people's money.

In our case, may the parent choose to use the more expensive service provider but pay for the difference from a *ma'aser* fund? May she claim that she would not have otherwise spent this money on this service? Therefore, this is not an outstanding obligation! From the perspective of the donor, the money is being given as fulfillment of the *mitzvah* of *tzedaka*, and in a fashion that the donor feels is voluntary. The donor feels that he or she is not benefiting from the additional money. This is because the service was going to be paid for anyhow, but at a lower rate. The additional amount, from which no gain is made, is being covered by a *ma'aser* fund. The parent wishes to stipulate before undertaking this extra obligation, that it is paid with *ma'aser* money. From the perspective of the recipient, a service is being provided and charged for. This very service is being done for the donor. Objectively, the money is spent on a charge that must be paid for.

Clearly, hiring a poor worker for a job that is a necessity and paying with *ma'aser* is forbidden. Our case is similar to paying him extra from *ma'aser*. The parent will be adding this to the regular *chulin* money. In cases of the *korban chagiga*, this is called being *tofail*, supplementing *chulin* with *ma'aser* money to get a nicer animal. How and when this is permitted is the subject of Talmudic debate. The poskim rule that one may combine money. However, that is a case where the basic needs would be enough to cover a smaller animal. In our case, the entire service is worth its cost. The poskim debate spending *ma'aser* money on an *esrog*. One could fulfill his obligation with one provided by the congregation. Each member has paid his share already. He could claim that he gains nothing from a personal *esrog*, and should be able to use *ma'aser* for it. Nonetheless, most poskim do not allow this. According to some, since the *esrog* itself is worth a minimal amount as a fruit, one may use *ma'aser* for the additional cost. Others disagree, presumably because the owner benefits from the extra. In our case, the parent claims that

she actually loses out in service. She would only go to the more expensive provider to provide her with livelihood. Nonetheless, the benefit is there, and the charge for it is fair. On the other hand, it is important to note that the *esrog* is a standard *devar mitzvah*. Our situation comes under the category of *tzedaka* to the poor, or at least, *vehechezakta bo*.

Some poskim point out that in accordance with the rulings cited, if one hired a poor laborer for more than he is usually paid, with the intent to provide him with the extra income, he could be paid with *ma'aser*. In that case, the laborer himself can not expect to be paid the extra, so it is all considered *tzedaka* for more than the service he provides. In our case, the provider will be charging the usual fee for the service rendered. It so happens that the user of the service would not normally pay this amount. For the 'donor' it is *tzedaka*, but for the 'recipient' it is obligatory payment.

The parent actually prefers to use the better and cheaper service. The only reason she will use the more expensive service is for *tzedaka*. There is indeed a *mitzvah* of *vehechezakta bo*, that she will fulfill with this. If they were equal, both in price and service, she would be **obliged** to support the weaker person. Since the cheaper service is also provided by a Jew, and it also provides her better service, there is no obligation to take the more expensive service. The additional cost is a totally voluntary undertaking and not an outstanding obligation. The fact that the provider considers it fair does not mean that the user is obliged to take it at that price. Therefore, she may assume that the additional cost is truly *tzedaka*, in the best possible form, and she may stipulate [privately] before agreeing to take the service, that she will pay the difference from *ma'aser*. [See Chagiga 7b-8a, Gitin 30a-b, Tosefta Peah 4:16, Poskim. Tur Sh. Ar. YD 245:4, 249:1, 331:146, commentaries. Tzedaka Umishpat 1:3185, 6:7, 33. Ma'aser Kesafim (Bronstein) 18:21.]

On the Parsha ... In his response to Hashem's promise to provide meat for the complaining people, Moshe said: *Three hundred thousand .. the people in whose [closeness] I am seated ... [11:21]* Why did Moshe add this phrase? Why did he repeat the notion that he would still have to provide the meat himself? The commentaries discuss the dialog. Moshe seems to doubt the ability of Hashem to provide. In addition, the despair of Moshe at this particular point, and his feeling inadequate, needs to be explained. It could be said, Moshe understood that the people cried because they truly perceived their need for meat as a necessity. They did not realize the *mohn* really took care of all their needs. He despaired because, apparently they thought he could provide them with this 'need' in the way he brought the *mohn*, in his *zechus*. He felt it was not a need. He thought Hashem said that if he would gather seventy elders, representing the people, they would have the *zechus* to bring the meat. But it was indeed a luxury, and they would all be punished for complaining. He responded, "I am also in the midst of the people, just like the elders! I also know their needs – and their wants, all three hundred thousand! I would know how to fulfill *hachayaihu*, 'with me', because I do not want them to have any less than I would want! However, they mistakenly think they need so much. Do they deserve to be punished for this? Would it not be better not to give in to them, to teach them that they don't need it?" Hashem responded, "This is not a matter of your fulfillment of *hachayaihu*! I can not make it seem that I can not provide it! You and the elders will indeed not 'share' it with them!" (see Rashi 23.)

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