

### Ethical Taxation (continued)

1. Prof. Adam Chodorow, *Biblical Tax Systems and the Case for Progressive Taxation*, J. of Law and Religion (2007)  
The comparison of tithing and tax rules also reveals how a society's values can play a significant role in the development of the law. The Federal tax rules are motivated to a large degree by concerns over horizontal equity, the idea that similarly situated people ought to be treated the same. Such concerns play virtually no role in the development of the tithing law. Instead, the rabbis are concerned that each individual fulfill his obligation to G-d, regardless of how others might be treated. The effect these different values have on the development of the law can best be seen by comparing the discussions concerning the accounting period rules and the propriety of deducting state sales taxes.

### How does Judaism view tax avoidance?

#### 2. Income Tax Act, Section 245

(2) Where a transaction is an avoidance transaction, the tax consequences to a person shall be determined as is reasonable in the circumstances in order to deny a tax benefit that, but for this section, would result, directly or indirectly, from that transaction or from a series of transactions that includes that transaction.

(3) An avoidance transaction means any transaction

- (a) that, but for this section, would result, directly or indirectly, in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit; or
- (b) that is part of a series of transactions, which series, but for this section, would result, directly or indirectly, in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit.

#### 3. Talmud, Beitzah 17a-b

עבר ואפה [במזיד, בלי עירוב תבשילין] מאי? ... תא שמע "מי שהניח עירובי תבשילין הרי זה אופה ומבשל ומטמין, ואם רצה לאכול את עירובו הרשות בידו. אכלו עד שלא אפה עד שלא הטמין, הרי זה לא יאפה ולא יבשל ולא יטמין, לא לו ולא לאחרים ולא אחרים אופין ומבשילין לו, אבל מבשל הוא ליום טוב ואם הותר הותר לשבת, ובלבד שלא יערים, ואם הערים אסור!" אמר רב אשי, הערמה קא אמרת - שאני הערמה דאחמירו בה רבנן טפי ממזיד.

May the food be eaten if one bakes [intentionally, without an *eruv tavshilin*]?... Come and hear: We have learned, "One who establishes an *eruv tavshilin* may bake, cook and wrap food. If one wishes to eat the *eruv tavshilin*, he may. If one eats it before baking or wrapping, he may not bake, cook or wrap, not for himself and not for others, and others may not bake or cook for him. He may only cook for the holiday, and then save any remainder for Shabbat – so long as he does not play a trick. If he plays a trick, the food is prohibited!" Rav Ashi said: You are talking about a trick; tricks are different, for there the sages are more strict than they are regarding intentional violation.

#### 4. Rabbeinu Nisim (14<sup>th</sup> century Spain) to Beitzah 17a

דאלו מזיד עובר על דברי חכמים ואין אחרים למדין ממנו, דעבריינן חושבין אותו, והוא עצמו פעמים יתן אל לבו לקיים מצות עירוב. אבל מערים סבור לעשות בהיתר ולא ישוב אל לבו לחזור, ולמדין ממנו ומעקר תורת עירוב. הלכך קנסוהו רבנן:

If one acts intentionally, he violates the words of the sages and none will learn from him; they consider him a sinner. Sometimes, he may even contemplate fulfilling the mitzvah of *eruv*. But one who plays a trick thinks he is acting permissibly, and he will never decide to repent, and people will learn from him, and the law of *eruv* will be uprooted. Therefore, the sages fined him.

#### 5. Talmud, Gittin 81a

בא וראה שלא כדורות הראשונים דורות האחרונים דורות הראשונים מכניסין פירותיהן דרך טרקסמון כדי לחייבן במעשר דורות האחרונים מכניסין פירותיהן דרך גגות ודרך קרפפות כדי לפוטרן מן המעשר...

Come and see the difference between earlier generations and later generations. Earlier generations brought in their produce via the foyer in order to obligate it in tithes, and later generations bring in their produce via rooves and yards in order to exempt them from tithes...

6. Mishnah, Maaser Sheni 4:3-4

הפודה מעשר שני שלו מוסיף עליו המישיית בין שהוא שלו ובין שנתן לו במתנה. מערימין על מעשר שני. כיצד? אומר אדם לבנו ולבתו הגדולים לעבדו ולשפחתו העברים 'הילך מעות אלו ופדה לך מעשר שני זה'.

One who redeems his secondary tithe adds 20%, whether he grew it or it was given to him as a gift. They may make a trick regarding the secondary tithe. How? One tells his adult son or daughter, or Jewish servant, "Here is money; redeem this secondary tithe."

7. Rabbi Moses Maimonides (12<sup>th</sup> century Egypt), Commentary to Mishnah Temurah 5:1

והתחבולה המותרת נקראת הערמה, ושאינה מותרת מרמה.

Permissible tactics are called *haaramah*; that which is not permitted is called *mirmah*.

8. Rabbi Moshe Sofer (18<sup>th</sup> century Pressburg), Responsa of Chatam Sofer Orach Chaim 62

"משום ברכה", פי' גבי "לא תוכל שאתו" כתיב [דברים יד:כד] "כי יברכך ד' אלקיך" והב"ב מפני שהיו צריכים להוסיף חומש נמנעו מלפדותם, והעלו הפירות והפסידו הברכה, ע"כ המציאו חז"ל ערמה של היתר לפדות בלי חומש ולהעלות המעות.

"[This is permitted] because of blessing" – Meaning, Deuteronomy 14:24 says, "When you cannot carry it... for Gd will bless you." Because people needed to add 20%, they declined to redeem it. They only brought the produce, losing the blessing. Therefore, the sages made a permissible trick available, to redeem without 20% and bring the money.

9. Professor Ephraim Urbach (20<sup>th</sup> century Israel), *The Sages* (Posner translation), pp. 252-3

It would appear that evasion of the payment of the one-fifth was widespread and the Sages realized that insistence on their part on the strict observance of the law could very well lead to the populace refraining altogether from bringing the redemption money to Jerusalem. The halakhic sanction they gave to the practice of evasion was, in a sense, a *takkanah* to prevent the development of a situation in which 'the people refrained from bringing' similar to that in which 'the people refrained from lending' and which led to the *takkanah* of the *prosbul* which Hillel adopted.

10. Talmud Yerushalmi, Maaser Sheni 4:5

בראשונה היו עושין כן במעות היו נוטלין אותן ובורחין התקיננו שיהא עושין בפירות אף על פי כן היו נוטלין אותן ואוכלין אותן. התקיננו שיהא מזכה לו אחד מעשרה לקרקע.

Initially they did this with money, but then the other would take the money and flee. They enacted to do it with produce, and the other would still take it and eat it. They enacted to assign to the other 10% of his land.

11. Elana Stein (21<sup>st</sup> century USA), *Rabbinic Legal Loopholes*, pg. 78

In fact, this dodge is quite reasonable in light of a post-Temple reality... [T]annaim recommend (and are cited as doing so themselves) that one redeem his produce and keep the money somewhere secure until it could be used whenever the Temple would be rebuilt. Hence, the need for ha'arama. Given that people would now always have to redeem ma'aser sheni rather than bring it to Jerusalem, people would lose an added 25% on their secondary tithe produce every time they set aside ma'aser sheni (namely the first, second, fourth and fifth years of each seven-year cycle)! To ease their burden, perhaps even at their behest, the rabbis offer a way to redeem the produce without the added expense.

12. Rabbi Shlomo ibn Aderet (13<sup>th</sup> century Spain), Commentary to Beitzah 11b

ויש לי לומר דהערמות דהכא היינו דוקא בדברים שההפסד בא להן מחמת שמחת י"ט, ושלא מחמת פשיעתו.

I could suggest that these tricks are allowed only where the loss is due to celebration of the holiday, not carelessness.

13. Rabbi Yosef Rosen (21<sup>st</sup> century Israel), **הערמות הלכתיות כתקנות צבור**

בענינים שבין אדם לחברו, או בין אדם לציבור (ולשלטון הממלכתי) פשיטא שלא יעלה על הדעת להתיר תחבולת הערמה, וזו תיחשב בבחינת "נבל ברשות התורה." מי שימצא דרך להזיק את חברו, בין בגופו ובין בממונו, בדרך שיפטר בבי"ד, הריהו מתחייב בדיני שמים, והוא קרוי רשע

In social matters, or matters of community (or government), it is obvious that one could not entertain the idea of permitting a trick. This would be in the class of "disgusting within the bounds of the Torah." One who would find a way to harm another, physically or financially, in a way that the courts would exempt, would still be liable before Gd, and would be termed "wicked".