

Preface

1. Income Tax Act, Section 245

(2) Where a transaction is an avoidance transaction, the tax consequences to a person shall be determined as if 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.

2. Rabbi Shlomo ibn Aderet (13th century Spain), Responsa of Rashba 3:381

ולענין שליח צבור גם כן ששאלת אם שכיר הוא שוכרין גם כן מקופת הקהל, שאעפ"י שהוא מוציא את הדל כעשיר מ"מ אין יד העני משגת כיד העשיר וכל מה שהוא תקנת הצבור ונעשית על ידי ממון נותנין לפי ממון.

Regarding the cantor, as you asked whether he may be hired from the communal tzedakah fund if he is paid: Even though he fulfills the obligations of needy and wealthy alike, still, the needy cannot afford as the wealthy can, and all that is for the needs of the community and is supported by funds is paid based on financial means.

3. Talmud, Bava Kama 113a

מתני'. אין פורטין לא מתיבת המוכסין
גמ' והאמר שמואל דינא דמלכותא דינא! אמר רב חנינא בר כהנא אמר שמואל במוכס שאין לו קצבה. דבי ר' ינאי אמרי במוכס העומד מאלין
Mishnah: One may not make change using money from the tax-collector's box...

Gemara: But didn't Shemuel say, "The law of the kingdom is the law?"

Rav Chanina bar Kahana cited Shemuel as specifying: This [mishnah] is regarding a tax collector who does not have a fixed amount. In the yeshiva of R' Yannai they said: This [mishnah] is regarding a self-appointed tax collector.

4. Kenneth Ryesky, *Jewish Ethical Perspectives to American Taxation*, Rutgers J. of Law and Religion 10:2 (2009)

Nevertheless, "[a]ny one may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes." (*Helvering v. Gregory*, 69 F.2d 809, 810 (2d Cir. 1934), aff'd 293 U.S. 465 (1935)) "One is not required to arrange his or her affairs so that the government will receive more tax than it is rightfully owed. Nor is it fraudulent to construe an ambiguous law in a manner that is adverse to the government." (*Estate of Trompeter v. Commissioner*, T.C. Memo. 1998-35, vacated and remanded on other grounds, 279 F.3d 767 (9th Cir. 2002))

Does Judaism like the progressive income tax?

5. Prof. Susan P. Hamill, *An Argument for Tax Reform Based on Judeo-Christian Ethics*, Alabama Law Rev. 54:1 (2002)

From a divine perspective, no person or group of persons, regardless of their station in life, stands at a lesser level of importance than other persons because all persons were created in G-d's image...

6. Lisa San Pascual, *The Social Gospel Lays an Egg in Alabama*, Religion in the News 6:3 (2003)

[W]hen newly elected Gov. Bob Riley—a stalwart low-tax Republican and standard-bearer for the religious right—took a page from the liberal Protestant playbook and announced that the Christian way to solve Alabama's huge budget deficit was to raise taxes—Alabamians and journalists all over the country were amazed... In the end, Riley's daring crusade to persuade Alabamians that Jesus wanted them to raise taxes proved far too novel and far too unpalatable for most Alabama voters.

7. Shemot 30:15

הַעֲשִׂיר לֹא יִרְבֶּה וְהַדֵּל לֹא יִמְעִיט... לְכַפֵּר עַל נַפְשֵׁיהֶם:

The rich shall not exceed, and the poor shall not reduce... to atone for their lives.

8. Prof. Adam Chodorow, *Biblical Tax Systems and the Case for Progressive Taxation*, J. of Law and Religion (2007)
The focus on the nominal rate of ten percent found in tithing ignores the transfer aspects of the rules governing agriculture. In years three and six of the seven-year cycle, the entire second tithe was to be given to the poor. Each year, under the obligations of *pe'ah*, *leket* and *shikhhah*, produce was to be left in the fields for the poor. This arrangement meant that, while all farmers were required to pay the same ten percent, the effective rate for the poor farmer was far lower because he had access to the aid to the poor; he received demogrant.

9. Rabbi Yosef Karo (16th century Israel), *Shulchan Aruch Yoreh Deah* 249:1-2

שיעור נתינתה, אם ידו משגת יתן כפי צורך העניים. ואם אין ידו משגת כל כך, יתן עד חומש נכסיו, מצוה מן המובחר; ואחד מעשרה, מדה בינונית... לעולם לא ימנע אדם עצמו פחות משלישית השקל לשנה, ואם נתן פחות מזה, לא קיים מצות צדקה.

The amount to give for it, if one can afford, is whatever the needy require. If one cannot afford so much, he should give up to 20% of his assets [*income*] for the ideal mitzvah, and 10% is the intermediate measure... One should never give less than 1/3 of a shekel per year. One who gives less has not fulfilled the mitzvah of tzedakah.

10. Prof. Adam Chodorow, *Biblical Tax Systems and the Case for Progressive Taxation*, J. of Law and Religion (2007)
Those opposed to progressive taxation have argued that the religious obligation to care for the poor is personal – not communal – and that it must be voluntarily undertaken.

11. Talmud, Bava Batra 8a

א"ר אסי אמר ר' יוחנן הכל לפסי העיר ואפי' מיתמי, אבל רבנן לא, דרבנן לא צריכי נטירותא. אמר רב פפא: לשורא ולפרשאה ולטרוינא אפילו מיתמי, אבל רבנן לא צריכי נטירותא. כללא דמילתא: כל מילתא דאית להו הנאה מיניה אפילו מיתמי.

Rabbi Asi cited Rabbi Yochanan: Everyone, even minor orphans, gives to the city's defenses – but not rabbis, as they do not require protection. Rav Pappa said: For a wall, patrols and armour guards, even minor orphans pay, but not rabbis, as they do not require protection. The general rule: Whoever benefits pays, even minor orphans.

12. Tosefta, Bava Metzia 11

כופין בני העיר זה את זה לבנות להן בית הכנסת ולקנות להן ספר תורה ונביאים...

Residents force each other to build a synagogue and to acquire a Torah scroll and Prophets...

13. Rabbi Yosef Karo/Rabbi Moshe Isserles (16th cent. Israel/Poland), *Shulchan Aruch Orach Chaim* 53:23

שכר ש"צ פורעים מקופת הקהל, אף על פי שהש"צ מוציא הדל כעשיר, מכל מקום אין יד העני משגת כעשיר. הגה: וי"א שגובין חצי לפי ממון וחצי לפי הנפשות, וכן הוא מנהג הקהלות (מהר"ם פדואה מ"ד).

Mechaber: They pay the cantor from the communal pot. Although he fulfills his role for needy and wealthy alike, the needy cannot afford as the wealthy can.

Rama: Some say we collect half based on wealth and half as a head tax, and this is the communal custom.

14. Talmud, Bava Kama 116b

שיירא שהיתה מהלכת במדבר ועמד עליה גייס לטורפה מחשבין לפי ממון ואין מחשבין לפי נפשות ואם שכרו תייר ההולך לפנייהם מחשבין אף לפי נפשות...

If a caravan is travelling in the wilderness and is attacked by soldiers to loot it, they calculate [the ransom burden] based on wealth, not lives. If they hire a guide to go before them, they also calculate based on lives...

15. Prof. Adam Chodorow, *Biblical Tax Systems and the Case for Progressive Taxation*, J. of Law and Religion (2007)
The primary beneficiaries of a tax system that transfers wealth are the recipients, so if the costs of government expenditures are to be charged to those who benefit, the recipients would be required to pay back in taxes the exact amount they received in benefits.

16. Prof. Adam Chodorow, *Maaser Kesafim and the Development of Tax Law*, Florida Tax Review (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.

How does Judaism view tax avoidance?

17. Talmud, Gittin 81a

בא וראה שלא כדורות הראשונים דורות האחרונים דורות הראשונים מכניסין פירותיהן דרך טרקסומן כדי לחייבן במעשר דורות האחרונים מכניסין פירותיהן דרך גגות ודרך קרפיות כדי לפוטן 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 obligated it in tithes, and later generations bring in their produce via rooves and yards in order to exempt them from tithes...

18. 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."

19. Rabbi Moses Maimonides (12th 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*.

20. Rabbi Moshe Sofer (18th 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.

21. Talmud Yerushalmi, Maaser Sheni 4:5

בראשונה היו עושים כן במעות היו נוטלין אותן ובורחין התקינו שיהא עושים בפירות אף על פי כן היו נוטלין אותן ואוכלין אותן. התקינו 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.

22. Elana Stein, *Rabbinic Legal Loopholes*, pg. 78

In fact, this dodge is quite reasonable in light 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.

23. Rabbi Shlomo ibn Aderet (13th 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.

24. Rabbi Yosef Rosen (21st 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".