INTRODUCTION

A. THE OBLIGATION

A person is obligated to give Maaser (one-tenth) of his monetary possessions to charity. He must give a tenth when he receives the capital, and thereafter only from the profits. There are Poskim who say that the giving of Maaser on monetary income is required by the Torah, since the Posuk which discusses Maaser refers to all forms of income. Other Poskim maintain that the obligation is a Rabbinical ordinance. Still others say that Maaser on money is only a min-hag (custom). Since many Poskim maintain that it is a custom, Rabbonim advise that when one accepts certain practices in giving Maaser, he should do it bli neder, without accepting the practice as a vow. In this way, if he should change his practice, he will not transgress any vows.

B. HOW MUCH SHOULD BE GIVEN

Although the basic obligation is to give “Maaser” (one tenth), the preferred mitzvah is to give a “Chomesh” (one fifth). Of note, is that Chazal limited to one fifth, the amount that one may give to charity, so that the giver should not subsequently have to turn to other people for his own support. However, most Poskim maintain, that if one is wealthy, and knows that he can afford to give more than one fifth of his income, he is permitted and encouraged to do so.

Ideally, one should give precisely one tenth of his income for Maaser, because of the deep meaning attributed to the figure of one tenth. Even when one gives a Chomesh, some say, he should separate a tenth twice. Only after he has meticulously put aside and given an exact tenth or a Chomesh,
C. WHEN AN ACCOUNTING SHOULD BE MADE

Although one consistently distributes Tzedakah during the year, an end of year accounting should be made so that one can arrive at a precise figure for Maaser purposes. Once the exact Maaser obligation is determined one can reconcile any differences between what one is required to give and what one has actually given.

Some Poskim maintain that this accounting should be done at three or six month intervals. However, most Poskim agree that one may also do this once a year. It is preferable to make this accounting before Rosh Hashanah, however one may select another date. Since most people use December 31, as their year end for tax purposes there is an advantage to use this date as a fiscal year end for the Maaser computation since the calculation would probably be more accurate. One should make the actual accounting as close to December 31, as possible, so that if he owes Maaser one can fulfill his total obligation forthwith.
Chapter I
WHO MUST PAY

The following is a brief overview of who is required to pay Maaser.

A. MEN AND WOMEN

All men, who have reached the age of thirteen, and women, who have reached the age of twelve, are required to pay Maaser. The income of a married woman is subject to Maaser. Even if a couple filed separate returns for tax purposes, they may combine their income for The Maaser Form.

B. CHILDREN

1. Bar & Bas Mitzvah

A boy, who reached the age of thirteen, and a girl, who reached the age of twelve, who has earned income or received monetary gifts must have Maaser given from their money. If the father permits the child to retain the money, then the child should give the Maaser. However, if the father wishes, he may use his own money to pay the child’s Maaser obligation.
2. Under Bar & Bas Mitzvah
Maaser should be given from all income received by a boy, under the age of thirteen, and a girl under the age of twelve. This would apply to both earned income and monetary gifts received by the child. Where the child has reached the age of chinuch, and the father permits the child to keep the money, Maaser should preferably be given from the child's money. In any case, if the father wishes, he may use his own money to pay the child's Maaser obligation.

C. CUSTODIAN ACCOUNTS
Interest or dividends, accruing in a custodian account, would be subject to Maaser only when the child receives absolute rights to the money, i.e., when he reaches majority.

D. CORPORATIONS
There is a difference of opinion among the Poskim whether a corporation controlled by several shareholders is required to pay Maaser. However, a corporation owned and controlled by a single individual is obligated to give Maaser. This obligation would be incurred even where the profits were not distributed to the controlling shareholder, but remained in the corporation. For example, a corporation owned and controlled by a single individual earned $200,000 after deducting all allowable expenses and taxes. Before the funds can be reinvested in the following fiscal Maaser year, the corporation must first pay its Maaser obligation ($20,000).

A Subchapter S corporation (i.e., where profits and losses are passed through to the shareholders) has the same Halacha as a regular corporation. If it is owned and controlled by a single shareholder, before the corporation may reinvest its funds in the following fiscal Maaser year, it would be required to pay Maaser on income, after deducting all allowable expenses and taxes. However, where the S corporation is controlled by more than one shareholder, some Poskim maintain that the individual shareholders would not be required to pay Maaser until they actually receive the money.

E. POOR PERSON
Some Poskim hold that a poor person is not required to give Maaser. However, others maintain that even a poor person is
Feinstein\(^9\) says that, in the above case, Maaser should not be given from the principal, since it was given on the condition that the principal not be touched. However, the couple would be required to give Maaser on the interest earned.\(^{20}\)

2) A newlywed couple decided to use their wedding gifts\(^5\) as a capital base, and to live only on the interest income, in order to enable the husband to learn Torah. They would now like to know whether they are required to pay Maaser on this base. This case entails several halachic questions.

The Poskim say that if one has more than “bread and water” (minimum living expenses)\(^{18}\) one is required to give Maaser. However, we are unsure of the time frame that this requirement encompasses. Does the “bread and water” criteria refer to a day or two\(^{21}\) or a year?\(^{22}\) For example, the new-

 obrigated to give Maaser from his earnings. Still other Poskim\(^{16}\) say that, even if a poor person is exempt from giving Maaser, he should, nevertheless, separate the Maaser and then take it for himself.

A poor person is one who earns only enough upon which to subsist. Most Poskim\(^{17}\) hold that the definition of subsistence is if one has “bread and water,” (i.e., the minimal basic living necessities of food, clothing and shelter\(^{18}\). Anyone who has more than that, would not be considered a poor person, with respect to giving Maaser.

Three interesting questions are often asked in regard to the above:

1) A newlywed couple received a dowry from their parents on the condition that the couple live off the earnings of the dowry and not touch the principal. Even though monetary\(^5\) gifts are subject to Maaser, Rav Moshe
A lywed couple may have received $5,000. This amount might not be considered more than “bread and water” when viewed over a year’s time. However, it would surely be considered more than “bread and water” if the time period is a day or two, and if so, the couple would not be considered poor people.

This case is further complicated by an additional halacha. There are different criteria involved in the determination of whether one is considered a “poor person” in order to receive Maaser as opposed to the requirement of giving Maaser. In order to be allowed to receive Maaser the time period that one must have less than “bread and water” is an entire year. In order to be required to give Maaser there is a question if the criteria of “bread and water” encompasses an entire year or just a day or two, as was mentioned in the previous paragraph. Therefore, it would be possible for an individual not to be considered a “poor person” in regard to his requirement to give Maaser and at the same time qualify as a “poor person” in order to receive Maaser.

According to those Poskim who hold that the time frame for being considered a poor person in order to give Maaser is only a day or two, the couple in the previous example would be obligated to give Maaser. The question now arises as to whether they can take this Maaser for themselves, insofar as they qualify as poor people in regard to receiving Maaser. It is preferable that the couple give Maaser. However, where the husband is learning Torah all day there are Poskim that exempt them from giving.

3) A Kollel couple has $40,000 in an account earning $4,000 a year in interest. In addition they earn $10,000 a year from other sources. They need $15,000 a year to support themselves. Are they required to give Maaser from their income of $14,000 a year? The question being that although their income is less than what they need to support themselves, nevertheless they may not be considered “poor” people because they have $40,000 in the bank and can live off that principal?

Many Poskim hold that they qualify as “poor” because they are not required to draw down the principal that they are using for interest in order to support themselves. The same would apply for a businessman who has a business worth $150,000, but he can only make $13,000 profit from the business. He qualifies as a “poor person”, since he is not required to sell off parts of his business to alleviate his situation. In both instances it is preferable to separate the Maaser and take it for himself.
Chapter II
DETERMINATION OF INCOME

Part One of The Maaser Form deals with "income". In determining income for Maaser purposes, there are a number of fundamental differences between the Halochos of Maasar and the U.S. Tax laws. The following paragraphs will highlight these differences and clarify the halachic approach to these topics as they relate to Maaser.

A. DEDUCTING LOSSES AGAINST PROFITS

The Internal Revenue Code allows one to combine business losses with business profits to get a net profit or loss figure for that taxable year. For example, one purchased some merchandise which he resold at a profit of $1000. The next day he purchased some additional merchandise and resold it at a loss of $300. For tax purposes he may combine the two transactions to obtain a net profit of $700. For Maaser purposes however, there are differing opinions as to this approach. Some Poskim\(^4\) are of the opinion that one cannot deduct the loss of one transaction against the profit of another.\(^2\) In the previous example, these Poskim maintain that the individual is responsible to pay Maaser on the gain of $1000 and he is not permitted to combine it with the loss.\(^3\)

However, most Poskim\(^4\) hold that a loss on one business transaction can be aggregated with profits of another, as long as the transactions occur during the same accounting period.\(^5\) The Maaser Forms are based upon the psak of the latter Rabbinic authorities.

The Internal Revenue Code also allows the carryback and carryover of certain net operating losses (N.O.L.) to reduce the taxable income of another year or years. However, for Maaser purposes, even the latter Poskim would not allow the N.O.L. carryback or carryover, since a loss could only be used within one accounting period.\(^5\)

B. ACCRUAL VS. CASH METHOD

Under the Internal Revenue Code there are two methods of accounting for income and expenses: 1) The accrual basis; 2) The cash basis.

An accrual basis taxpayer may deduct expenses incurred, though not yet paid, and must realize income which was earned, though not yet received. For example, someone purchased merchandise on credit for $3000 and sold it for $5000. Even though the obligation does not come due and is not paid until the following tax period, he may deduct the $3000 in the period he made the sale.

\(^{1}\) שיריא שובה עיקב חיר סול פמי פיצ פיתהת
\(^{2}\) מפורט זיכר שיריא עיקב חיר סול פמי פיתהת
\(^{3}\) מפורט זיכר שיריא עיקב חיר סול פמי פיתהת
\(^{4}\) מפורט זיכר שיריא עיקב חיר סול פמי פיתהת
\(^{5}\) מפורט זיכר שיריא עיקב חיר סול פמי פיתהת

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This will result in a net profit of $2000. The same principle applies to the realization of income. In the above example, if one sold the item on credit, he would pay taxes on the profit ($2000), even though he did not yet receive the money.

A cash basis taxpayer realizes income only after having received it and deducts expenses only after he has actually paid them. Therefore, in the example where one purchased merchandise on credit and sold it for $5000 cash, he would pay taxes on the gross amount of income received ($5000). In a situation where one sells on credit, the cash basis taxpayer does not recognize income in the current year and would first pay taxes upon receipt of the money in the following year.

For Maaser purposes, some Poskim hold that one is obligated to pay Maaser only upon receipt of the income. Therefore, where one sells on credit, one would not have to pay Maaser until the money is actually received. This may pose a problem to those taxpayers who use the accrual method on their 1040, since they would have to recompute their income, using the cash basis, in order to determine their Maaser income. However, some Rabbonim hold that one may use the accrual method for Maaser purposes. This is based on one of the following reasons:

1) Maaser is a partnership between the Masser-payer and Hashem, and any equitable and reasonable method of accounting, for income and expenses, can be used, which would be used among partners. This same theory is used in allowing for Maaser purposes the lower of cost or market method in valuating inventory.

2) There are Poskim who say that one can pay Maaser on income, even though the money was not yet received. In regard to expenses which have not yet come due, the reason that the accrual method may be used, is that Maaser is paid only upon net profits (i.e. revenues less expenses). When someone sells an item, which he purchased on credit (or when one has employees working for him), though the invoice (or the expense) may come due in the following accounting period, the expenses are nevertheless part of this sale. When he receives the proceeds of the sale, the part which represents his expense is obligated to his suppliers (or employees). That portion of the money was never his. All he had was the value of this money and it was as if he had borrowed it. Therefore, the $3000 in the above example...
would not be included in the profit, as it is actually the supplier's money. 12

3) Tosafos 13 maintains that an obligation, that one is absolutely and definitely required to pay, is considered as if it was paid when the obligation was incurred. Therefore accounts receivable and accounts payable can be used in the determination of income for Maaser purposes.

The Maaser-payer may choose any method. However, one should be consistent.

C. DEPRECIATION

The Internal Revenue Code allows one to depreciate certain fixed assets. Depreciation is usually based on one of several methods. The methods are accelerated, straight line and a variation known as Section 179 property deduction. These deductions are based upon arbitrary and usually unrealistic lives over which the asset can be expensed. The Internal Revenue Code also allows for the depreciation of real estate even though it may not actually depreciate.

For Maaser purposes one would not be allowed to depreciate assets which do not actually depreciate in value (such as may be the case for real estate). In regard to those assets which do decrease in value, there are differing opinions among the Poskim as to how to handle this. Some 14 feel that a normal equitable accounting procedure should be used using a realistic measure of the asset’s life expectancy. Thus a car which is used for business purposes and has an expected life of 10 years can be depreciated at a rate of 10% a year, or may be depreciated using the actual annual decrease in the car’s resale value. There are other Poskim 15 who allow one to deduct the entire cost of a business expenditure in the year in which it was purchased. Still other Poskim 16 say that one may first deduct the cost only when the asset is disposed of. Whichever method is chosen, should be used consistently.

Depletion is a deduction for the depreciation of certain natural resources. There are two methods of determining the depletion deduction; cost and percentage depletion. For Maaser purposes, one may use the cost depletion method since this is an actual measure of the diminution of the property. Percentage depletion is not allowed since it is based upon arbitrary percentages and allows one to expense more than one’s cost.

D. INTERMINGLED PERSONAL AND BUSINESS EXPENSES

Another area where the laws of Maaser and taxes differ is where business and personal costs are intermingled. The following are some examples of this:

1. Travel & Entertainment

Under the tax law, if one entertains a client at a restaurant, he would usually be entitled to deduct a fixed percent of the cost of his and the client’s meal as a business deduction. For Maaser purposes one may deduct only the amount of the bill which exceeds the Maaser-payers usual personal expense. For example, a businessman takes a client out to dinner at

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a restaurant and the bill totals $75. If the Maaser-payer’s cost of a dinner that he eats at home is usually $5, he may deduct only $70 as a business expense. Since the Maaser-payer would have had to eat anyway, only the incremental cost of doing business is deductible. 17

An additional point is that only reasonable business expenses are deductible. 18 Therefore, if one purchased an automobile for $35,000 when a $15,000 automobile would have served the same purpose, only $15,000 would be allowed as a business expenditure. The same would apply where one goes to an expensive restaurant with a client and the same business objective could have been accomplished at a less expensive restaurant, then one may only deduct the cost of a meal at the less expensive restaurant.

2. Vacation Home

Under certain circumstances the Internal Revenue Code allows one to deduct expenses of a vacation home. For example, if one lives in this house half the year and rents it out for the other half, he could usually deduct 50% of his expenses on his tax return. For Maaser purposes, the deduction would depend upon the intent of the individual who purchased the home.

a) If the main objective of the person purchasing the home was for his personal use, and he would have made the purchase even if he could not rent it out part time, then the expenses which did not increase due to the rental of the property, (e.g. insurance), are not deductible for Maaser purposes, for they would have been incurred in any case. 19 However, those expenses which have directly increased due to the rental, (e.g. tenant’s use of utilities), are deductible for Maaser purposes.

b) In a situation where one purchases a house with the intent to live there part time and rent it out part time, and he would not have purchased this house if he could not rent it part time, then he is allowed to deduct all expenses incurred in proportion to the time rented. Thus, in the previous example, one would be permitted to deduct 50% of all expenses (e.g. insurance and utilities). 19 The I.R.C. limitations do not apply for Maaser purposes.

3. Office at Home

If someone has six rooms in his home, and uses one of the six rooms regularly and exclusively for business, he would in certain situations, be allowed to deduct on his tax return one sixth of all his home expenses (i.e. rent, heat, taxes etc.). However on his Maaser Form he may deduct only the extra costs due to his business activity. Thus, where the tenant would have rented his six room apartment (or an owner would have purchased the house) anyway, no Maaser deduction would be allowed. 20 Incremental costs, such as the extra electricity used in running the office, may be deducted.

4. Moving Expenses

If one moves to another area and changes job locations, he could deduct certain
expenses associated with the move, if he meets the requirements of the tax law. The Internal Revenue Code allows this deduction even if the move was for personal reasons (i.e. warmer climate). For Maaser purposes, moving expenses could not be deducted if the move was made for personal reasons. The move must be based primarily on business motives. The time or distance tests and other I.R.C. limitations are not applicable for Maaser purposes.

E. INFLATION FACTOR

Recently, the Internal Revenue Code has begun to account for, in a limited manner, the effect of inflation on the federal tax computation. In regard to Maaser, there are many Poskim who hold that any profits earned, which are due strictly to inflationary causes, would not be subject to Maaser. For example, someone sold some real estate and realized a profit of 16%. If, over the years which he held the asset, the cumulative inflation rate was 10%, only 6% of the profit would be subject to Maaser. Some Poskim apply the same theory to interest. If one earned 10% interest on one’s money and the inflation rate was also 10% the individual would not be required to pay any Maaser on these earnings. However, there are Poskim which differentiate between a personal home going up in value due to inflation, and interest earned in a bank. They explain that interest is “new” money and is therefore considered income, whereas a personal home that is sold is just an exchange of a money equivalent for actual money. It is preferable not to deduct the inflation rate in computing interest income subject to Maaser.

A wage earner who receives an annual cost of living increase, which is based upon the inflation rate, must pay Maaser on his entire salary. He may not deduct the portion which reflects the increase due to inflation. This differs from the situation where one realizes a profit from the sale of an object which is already in his possession and the object has increased in value due to inflation. In the case of the wage earner all monies received are considered “new” income since this is the first time that he has possession of the funds. Thus, it is completely subject to Maaser.

The rate used in determining inflation would only include the increase in costs involved in purchasing basic necessities and would not include luxury items.

F. NONTAXABLE AND PREFERENTIAL INCOME

The U.S. Tax Code allows certain items of income to be fully taxed, certain income to be partially taxed, some income to be taxed under certain circumstances and others to be wholly tax free. The Halochos of Maaser are quite simple in that all income is subject to Maaser.

The following are examples of income which are only partially taxed, and only after certain criteria are met under the I.R.C., yet are fully subject to Maaser:

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1) Inheritance\textsuperscript{26} (estate tax);
2) Alimony;
3) Social Security benefits.

For Maaser purposes it would not matter whether the couple is divorced or separated on the wife's accord,\textsuperscript{27} all alimony received is considered income.\textsuperscript{27} Similarly, social security benefits are considered income for Maaser purposes under all circumstances.

The following list contains examples of items which are entirely exempt from income tax, however, they are still considered income for Maaser purposes:

1) Monetary\textsuperscript{26} and nonmonetary gifts (i.e. seforim, china) received and sold.\textsuperscript{28}
2) Workman's compensation;
3) Life insurance proceeds;
4) Damages received from lawsuits and accident proceeds in excess of actual costs incurred due to the accident;\textsuperscript{29}

5) Welfare payments;\textsuperscript{30}
6) Food stamps;\textsuperscript{31}
7) Money received from a qualified Kollel (scholarships and fellowships);
8) Municipal bond interest.

Any money saved due to a tax deduction is considered additional income for Maaser purposes.\textsuperscript{32}

\subsection*{G. INDIRECT INCOME}

Indirect income is where one receives a benefit or a reduction of a cost without having directly received any money. There are Poskim\textsuperscript{33} who maintain that all indirect income is subject to Maaser. Thus, one would be obligated to pay Maaser on the savings that one obtained by not having had to make an actual cash outlay.

Some examples:

a) If one receives free lunch at his place of

\textsuperscript{26}א""כ נחלת ההנה בפסיו חסרותフリー. \(\text{לך ימי.}\)
\textsuperscript{27}לכלל החכם אויה שידךperorית ע""ב לי. \(\text{לך Commissioners.}\)
\textsuperscript{28}לךכס סמלים שירש מתנה. \(\text{לך Commissioners.}\)
\textsuperscript{29}לך שראית מהרו לוער. \(\text{לך Commissioners.}\)
\textsuperscript{30}לך מ僅 without. \(\text{לך Commissioners.}\)
\textsuperscript{31}לך מ僅 without. \(\text{לך Commissioners.}\)
\textsuperscript{32}לך מ僅 without. \(\text{לך Commissioners.}\)
\textsuperscript{33}לך מ僅 without. \(\text{לך Commissioners.}\)
work or at his Yeshiva, he would have indirect income in the amount of money he saved by not having to buy his own lunch;35
b) H.U.D. rental payments (Section 8);
c) Obligations or debts paid for one person by another, e.g. a parent pays a married child’s rent or grocery bill, or helps with a downpayment for a house;
d) Medicare and Medicaid payments to doctors.

In regard to medical insurance paid by one’s employer, most Poskim36 hold that one is not obligated to give Maaser on this benefit. This is based upon the following reasons:
1) One does not have any benefit until one has actual use of the insurance. Therefore, one did not receive any benefit as of yet.
2) Since there is no obligation to pay for the insurance, it is not considered a payment of an actual debt.
3) The insurance is not a necessity.

However, where the insurance pays a medical bill, and one had an actual benefit, he would then be required to pay Maaser in the amount of the benefit received, since the above reasons no longer apply.

Many Poskim hold that there is no Maaser obligation at all on indirect income. Their reasoning is based upon the following points:
1) Non-monetary gifts (e.g. free lunch) are not subject to Maaser.37
2) Where someone receives a gift or subsidy, and its use is restricted for a specific purpose (e.g. to be used for rent only), then he is not allowed to give Maaser from that gift.38

Most Poskim agree,39 that indirect income which is given for a specific purpose would not be subject to Maaser.

These are some of the discrepancies encountered. The instruction sheets of Maaser Form II which is based on Form 1040 of the I.R.S., contain line by line instructions to reconcile the differences between the tax law and the Halachos of Maaser.

Chapter III
ADJUSTMENTS TO INCOME

Part II of The Maaser Form deals with adjustments to income. Here too, we find differences between the Halachos of Maaser & the Internal Revenue Code.

Following are some of these discrepancies:

A. HOUSEHOLD EXPENSES

The Internal Revenue Code allows for certain deductions in the determination of one’s tax base.
taxable income. These deductions are allowed even though they are household expenses and not related to business. Some examples are:

a) Medical and dental expenses (subject to certain limitations);

b) Interest payments on mortgages and on nonbusiness loans (subject to certain limitations);

c) Parsonage deduction allowed to clergymen.

Additionally, there are items which are considered credits, i.e. they go directly against the tax liability.

The Poskim disagree if necessary household expenses may be deducted in determining income for Maaser purposes. Some Poskim allow the deduction of household expenses. Therefore, rent, food, clothing, utilities, etc., which are all necessary, may be deducted to arrive at Maaser income. However, other Poskim do not allow the deduction of household expenses. It is preferable to follow the latter psak.

B. DEPENDENTS

The U.S. Tax Code allows for a specific deduction from income for all dependents.

This deduction is an arbitrary figure and does not realistically reflect the true cost of food, shelter and clothing. For Maaser purposes, the Halacha will vary according to the circumstances.

1. Children Under Six Years Old

Expenses of supporting children under six years of age are not deductible, since the parents are obligated to support them, and an obligation may not be deducted for Maaser purposes.

2. Children Six Years and Older

There is a difference of opinion among the Poskim if one is permitted to use Maaser money for the support of children six years old and over. There are Poskim who maintain that one may use Maaser money to support these children, since the Gemara considers support of this age group to be charity. Other Poskim say, that though the Halacha permits the use of Maaser money in this case, it is preferable not to do so. Still others say, that in our times it is customary to support children until they are able to earn a living, and the support of these children is an obligation of the parents. Therefore, Maaser money cannot be used in their sup-
support, since one cannot use Maaser money to pay for a personal obligation. Also, this support can not be deducted from one’s Maaser obligation, since a personal obligation, according to most Poskim,\textsuperscript{3,4} is not deductible. It is preferable not to deduct their support unless the individual would undergo financial hardship.\textsuperscript{11}

3. Wife

The support of a wife is obligatory and is therefore not deductible.

4. Parents

A child is not obligated to use his own money in the support of his parents.\textsuperscript{12} Therefore, one is permitted to use Maaser money to support one’s parents. However, the Shulcan Aruch\textsuperscript{13} strongly advises against the use of Maaser money in the support of parents, if this does not cause any undue financial hardship upon the child.

C. TAXES

1. Income Tax vs. Sales Tax and Personal Real Estate Tax

Under the Internal Revenue Code, if one itemizes his deductions, he may deduct real estate, and state and local income taxes. Once again, there are differing opinions among the Poskim as to how to apply this to Maaser. The Poskim agree that taxes levied upon income are deductible,\textsuperscript{14} since it is considered as never earned.\textsuperscript{15} Therefore, one may deduct federal, state and local income taxes. In addition one may deduct social security and self employment taxes, since these taxes are based upon earnings and are considered a reduction of income. Similarly, all business taxes may be deducted. The Poskim differ in the area of sales tax on personal purchases and real estate taxes on a personal residence. Some\textsuperscript{16} hold that they are not deductible, since they are obligations imposed by the government, and obligations are not deductible. Other Poskim\textsuperscript{17} maintain that all taxes, including real estate taxes on a personal home, are deductible.\textsuperscript{18}

Here again, unless undue financial hardship will occur,\textsuperscript{19} it is preferable not to deduct personal real estate taxes from income.

2. Accrual vs. Cash Method

The Internal Revenue Code allows a taxpayer who uses the accrual method for business purposes to use the cash basis in the determination of his state and local income tax deduction. For example, a taxpayer had $1000 in state taxes withheld from his salary in 19X4. When computing his 19X4 state tax return his total tax expense turns out to be $1500 and he pays the balance ($500) in 19X5. Even if this taxpayer uses the accrual method in the determination of his business income, he will nevertheless usually use the cash basis in the determination of his state tax deduction. Thus, in the above example he would only be allowed to deduct as an itemized deduction $1000 — the amount paid in 19X4. The balance of $500 will be deducted on his 19X5 return.
However, for Maaser purposes one should be consistent. Therefore, if one used the accrual method on Schedule C, he should also use the accrual method in the computation of his federal, state and local income tax deduction for Maaser purposes. In the above example, the accrual basis Maaser-payer would take a deduction of $1500 in 19X4, the actual amount of taxes incurred.

The same theory would apply in the case of a tax refund. For example, a taxpayer had $2500 withheld from his salary in 19X4. When he filed his 19X4 state tax return, the tax expense for the year turned out to be $2100. He will therefore be receiving a refund of $400. For federal tax purposes he deducts the amount actually paid ($2500) in 19X4 and realizes the $400 refund as income in 19X5, the year received. An accrual basis Maaser-payer however, only deducts the actual tax expense ($2100) in 19X4. Thus, when he receives the refund in 19X5, he would not realize any Maaser income, since he never deducted the excess ($400) in 19X4.

A cash basis Maaser-payer would treat his income tax deduction the same as a taxpayer, and deduct income taxes in the year actually paid.

D. ADDITIONAL DISCREPANCIES BETWEEN DEDUCTIONS FOR TAX AND MAASER PURPOSES

There are certain items for which the Internal Revenue Code allows one a deduction in determining taxable income. These deductions are allowed even though they have no direct or actual business purpose. However, for Maaser purposes they would not be allowed. Some examples are:

1) IRA deduction and payments to a Keogh plan;
2) Alimony paid (subject to certain requirements).

The I.R.C. and the Halochos of Maaser also differ in the area of personal casualty losses. For tax purposes one may deduct a personal casualty loss subject to certain percentage limitations and then only after deducting a specific dollar amount. For Maaser purposes however, some Poskim maintain that all casualties and losses may be deducted without regard to any limitation or deduction.

E. REFINANCING OF MORTGAGES

An interesting question has recently arisen in regard to the refinancing of mortgages. An example would be where one owns a building which produces annual rental income of $30,000. The owner then borrows $300,000 against his equity in the building and in return is required to pay $30,000 a year in interest charges. He then uses the proceeds from the loan for personal reasons. For tax purposes, he will usually pay no tax since the income from the building ($30,000) is offset by the interest expense ($30,000). However, for Maaser purposes one may not deduct the interest expense associated with a personal (non business) loan. Thus he must pay Maaser on the rental income of $30,000. In addition, some Poskim say that he is
Chapter IV

PARTIAL LIST OF WHERE TO DISTRIBUTE MAASER

The fundamental rule to determine where to distribute Maaser money, is that no obligation may be paid with Maaser money.¹

Following are several examples, in no specific order of priority, as to where, and to whom, one can distribute his Maaser money:
1. Poor people.²
2. To enable someone to learn Torah.³
3. To institutions of Torah.⁴
4. For tuition for one’s own children (boys or girls) in Yeshivos, only if one is undergoing financial hardship.⁵ However, one may use Maaser money to pay for the tuition which is in excess of his children’s portion (i.e. tuition surcharge so that other children who are less able to afford the tuition can attend).⁶

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¹ The Talmud states that Maaser should be distributed to the poor, the sick, and the students of Torah.
² Sharing with others who are in need is a way to fulfill the commandment of Maaser.
³ Helping those who wish to study Torah is another way to distribute Maaser.
⁴ Supporting institutions of Torah is a worthy cause for Maaser.
⁵ Tuition surcharges are often necessary for students who require additional support.
⁶ Some authorities argue that Maaser can be used in these circumstances. However, others are more restrictive in their application.
5. The support of married children who are learning Torah full time, only if one could not afford to support them otherwise.

6. Mitzvahs that one is not obligated to do, if the only way he could afford to pay for them is by using Maaser money. Examples:

   a) Buying seforim for personal use and for lending to others.

   b) “Hachnosos Kallah” for people who don’t qualify as “poor people”, but could not otherwise afford the wedding.

However, Maaser money can not be used for Mitzvahs which one is obligated to do, such as the Mitzvos of tefilin, mezuzah, tzitzis, etc.

7. A contribution one makes upon receiving an aliyah to the Torah, only if one had decided prior to making the contribution to use Maaser money.

8. Buying an aliyah. Some Poskim say that only the portion of the cost which exceeded the prior person’s bid, can be used as Maaser money, and only if one had decided prior to making the bid to use Maaser money.

Synagogue dues, and seats for the Yomin Noroim should not be taken from Maaser money, since they are obligations for services rendered.

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