

# S·E·P·H·A·R·D·I·C HALACHA JOURNAL

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## AUDITORY LEARNING

### May a Jew Work for the IRS?

By Rabbi Yitzhak Grossman

"I'm from the government, and I'm here to help you."

Mesira—the enabling of hostile actors to seize property of, or cause harm to, Jews—is a serious Aveira. A number of Poskim have discussed the propriety of a Jew working as a tax auditor, in which capacity he may discover and then be obligated to report Jewish malfeasance, causing the perpetrator to suffer criminal or civil penalties. This article surveys the positions of the Poskim.

### SHEVET HALEVI: HURMENA D'MALKA

The broadest and most fundamental argument for allowing a Jew to work as a criminal investigator for the government is advanced by Rav Shmuel Vosner, in his *Teshuvot Shevet HaLevi*.

He cites the *Gemara's* account of Ribbi Elazar b'Ribbi Shimon accepting a commission as a government investigator, in which capacity he would identify thieves, who were then executed. Ribbi Yehoshua ben Korha objected: "Vinegar, son of wine! Until when will you turn over (moser) Hashem's nation for execution?" Ribbi Elazar responded: "I am eliminating thorns from the vineyard." Ribbi Yehoshua retorted: "Let the Owner of the vineyard (Hashem) come and eliminate His thorns."<sup>1</sup>

Following earlier authorities, the *Shevet HaLevi* maintains that despite Ribbi Yehoshua's objection, normative *Halacha* allows working for the criminal justice system, particularly

where capital punishment is not involved.<sup>2</sup>

### IGROT MOSHE: THE AUDITOR IS NOT OUT TO GET YOU

Rav Moshe Feinstein, in *Igrot Moshe*, discussing a very similar case, is also lenient, albeit for entirely different reasons. He makes no mention of the account of Ribbi Elazar (despite doing so in another *Teshuva*<sup>3</sup>). Instead, he justifies accepting the position based on the consideration that even if one won't accept it, someone else will, so accepting it causes no harm.

Additionally, R' Moshe avers, the primary goal of the IRS auditor is not to catch fraud but to verify the accuracy of the return that he is reviewing.

The taxpayer, after all, has certified that it is correct, and he presumably believes this to be the case, since he would not likely lie knowing the submission is subject to audit. The auditor, in turn, may therefore assume that it is likely the accounts are correct. When the auditor does encounter fraud, he has no choice but to report the truth.<sup>4</sup>

Even granting the *Igrot Moshe's* assumptions about the nature and goals of tax auditing, it is clear that his reasoning is limited to situations where these assumptions do indeed hold. He would not necessarily allow accepting a position as a criminal investigator whose primary job is to uncover and identify wrongdoing. This is particularly true where considerable skill is involved and it cannot be assumed that any other investi-

2 Shut. Shevet HaLevi, 2:58. Cf. Shut. HaRashba, cited in Bet Yosef, Hoshen Mishpat end of Siman 388; Shut. Maharam Shik, H.M. siman 50; Shut. Darche Shalom (Leiter) Siman 46; Shut. Me'orot Nasan (Leiter) Siman 61; R. Asher Weiss, Mesirah Le'Shiltonot Al Mi Sh'Hashud Be'Hit'ollelut Be'Yeladim, Yeshurun Vol. 15 pp. 656-60.

3 Shut. Igrot Moshe, Orah Hayim, Helek 5 at the very end of Siman 9.

4 Shut. Igrot Moshe, Hoshen Mishpat, Helek 1 Siman 92.

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By Rav Mordechai Lebhav

### TEFILLIN OF RABBENU TAM: LAWS & CONCEPTS

One of the most famous disagreements in Halacha is that of Rashi and Rabbenu Tam about the order of the *Parashiyot* in the *Tefillin*. This is already an older disagreement, cited in the Rambam's *Teshuvot* (there are lengthy discussions as to what the other *Rishonim* hold).

According to Rashi they are placed in the order in which they are mentioned in the Torah: *Kadesh, VeHaya Ki Yeviacha, Shema, VeHaya Im Shamo'a*. Whereas according to Rabbenu Tam they are placed with the *VeHaya's* in the center, so: *Kadesh, VeHaya Ki Yeviacha, VaHaya Im Shamo'a* and *Shema*.

The *Tur* writes that a G-d fearing Jew should wear both pairs but have in mind to only fulfill the *Mitzvah* with whichever *Tefillin* are the right ones, so as to not transgress *Bal Tosif*—adding on the *Mitzvot*. *Maran* adds that only if you are known and famous to be a pious Jew (*Hassid*), so it should not seem like haughtiness (*Yohara*). This was the general custom in previous

spotlight

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The Medical Halacha Center of the Bet HaVaad now to launch weekly shiurim presented by our Poskim where they explore a specific topic in depth. The inaugural shiur is scheduled to be delivered by Senior Posek, Rabbi Eliezer Gewirtzman, shlit"u, and will be available through our office, upon request.

1 Bava Metzria 83b.

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gator would be equally likely to discover a particular crime.

### TESHUVOT V'HANHAGOT: A DISTINCTION AMONG COUNTRIES

The *Teshuvot V'Hanhagot*, discussing a case similar to that of R' Moshe, also does not cite the account of Ribbi Elazar.

He is reluctant to allow a Jew to accept a position as a tax auditor, unless any Jewish tax evaders that he is likely to catch will presumably be nonobservant. In that case he is lenient, because if they are not keeping the Torah, they should certainly be following the laws of the land like any other citizen, and there is no need to abet their attempt to flout those laws.

Additional considerations that the *Teshuvot V'Hanhagot* invokes are: a) the financial straits of the candidate for the job, and b) the fact that if he accepts it he will be in a position to help his fellow Jews by warning them before auditing them.

He says that the principle of *Dina D'malchuta Dina* does not apply where the tax system is corrupt and capricious:

"It depends greatly on 'protektzia' (connections) and officials... and in such circumstances we do not say *Dina D'malchuta Dina* even

with regard to non-Jews."<sup>5</sup>

### MISHNE HALACHOT: IRS AUDITORS WILL DESCEND INTO GEHINNOM

The *Mishne Halachot* considers IRS auditors who cause Jews to suffer at the hands of the legal system to be textbook *Mosrim*, who have no share in the World to Come, and will descend into *Gehinnom* and be judged there for generations upon generations, where their bodies and souls will be destroyed.

He rejects the argument made by the *Igrot Moshe* that the filer of the improper return would have been caught anyway, on a number of grounds: first, the other auditor may not have been as astute as he; second, the other auditor may not have selected that particular return for review, since the auditors do not review all returns; third, even if we assume that the perpetrator would have been caught regardless, this does not absolve the one who actually causes the harm of responsibility as a *Moser*.

The *Mishne Halachot* does cite the story of Ribbi Elazar, but he appears to rule in accordance with Ribbi Yehoshua ben Korha.<sup>6</sup>

5 Shut. Teshuvot Ve'Hanhagot, Helek 3 Siman 476.

6 Shut. Mishne Halachot, Mador HaTeshuvot, Mahadura Kama, Helek 6, 313:2.



## מסכת מנחות

## This Week's Topics

RAV ARYEH FINKEL

- דף פ"ד Using Shmitta Oil
- דף פ"ה Moshe vs. Pharaoh
- דף פ"ו Spending on Mitzvos: When & How
- דף פ"ז To Be Exact: How Exact are Measurements & Shiurim?
- דף פ"ח What is the Hatavas HaNeiros?
- דף פ"ט Menorah Oil: How Much?
- דף צ' Libation Liability: Who Brings the Nesachim?

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generations.

However, in our days, Hacham Ovadia Yosef

in one of his first Teshuvot writes that one may wear Rabbenu Tam's Tefillin, as the *Hida* writes in *Birke Yosef* that had become the custom in his days [Some say that only if one wears them together it is a problem of haughtiness (*Kav Naki*).] Rav Elyashiv also said that

in our days it has become common practice. One should at least try to wear them once in his life.

[The *Kav Naki* (Rav Kalifa B. Malka) counts even more possibilities of *Tefillin*, and devises a way to wear all of the types of *Tefillin* throughout the year, reserving *Rabbenu Tam's Tefillin* for the day after *Yom Kippur*.] As to an unmarried Yeshiva student, Hacham Ben Tziyon writes that he shouldn't wear, but

Hacham Ovadia argues, provided that he will have pure thoughts.

According to the *Mekubalim* both *Tefillin* are true and thus they should be worn at the same time, if they fit. However, most wear Rashi first and Rabbenu Tam second.



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