

Put It on the Bill Expense Accounts and Reimbursement Forms

Billing the Boss

KPMG, a professional services and auditing company, reports some creative interpretations of the term “business expenses” for items charged to the employer: \$62,000 in wine, submitted by six investment bankers; a limousine to transport a politician a distance of under two miles at the National Mall in Washington DC; a flat screen TV for an executive’s home, since it might also be utilized for conference calls; and perhaps best of all, the entire cost of an executive’s daughter’s wedding, listed as a “business development expense,” because he had invited clients! (KPMG.com, “Expense Report Fraud: Chump change or damaging dollars?”)

Is this universal business practice? Not necessarily. As a professor at Harvard Business School, my brother receives a \$5,000 annual technology allowance. Two years ago he submitted a reimbursement for only \$240, the cost of a new monitor for his computer. He had not needed anything else, and did not feel right spending more of the allowance on items that were not genuinely necessary. Last year he truly outdid himself, spending nothing at all.

An employee may need to spend money on items related to work: transportation costs for business trips, equipment or supplies required to carry out his job, or lunch at business meetings with clients. If the employee spent his own money, whether in cash or by credit card, he routinely submits a reimbursement form listing his expenses, and the employer pays back (reimburses) what he spent.

A more efficient method, certainly more convenient for the employee, is the expense account. The company has its own credit card, or accounts with specified suppliers, and expenses are billed directly to the company. Items billed to an expense account may be subject to less scrutiny than those appearing on a reimbursement form. Both are a major testing ground of an employee’s integrity.

The issue of the expense account and reimbursement form is more ancient than we may have imagined. At the height of Korach’s rebellion in the desert, Moshe Rabbeinu said, “I did not take a single donkey from them” (*Bamidbar* 16:15). Moshe Rabbeinu was a public servant who never asked to have his expenses covered: “What it would have been proper for me to take, I did not take from them. It is standard practice for one who works for the public to take his wages from the public. And I, when I went from Midyan to Egypt, it would have been proper for me to take a donkey from them, since I was traveling for their needs, but I did not take” (*Bamidbar Rabbah* 18:10).

Moshe, living in Midyan, was instructed by Hashem to go to Egypt to redeem the Jewish people from slavery. This clearly was not a personal trip, and the cost of the donkey and its upkeep should legitimately have come from public funds, not from Moshe’s own pocket. In contemporary terms, where was Moshe Rabbeinu’s reimbursement for plane fare, cabs, or at the very least, gas and oil?

The *Midrash* goes on to tell us that in a later generation, “The *tzaddik* Shmuel said, ‘Whose ox have I taken, and whose donkey have I taken?’” (*I Shmuel* 12:3). Shmuel

would sacrifice oxen on behalf of the Jewish people to arouse Divine mercy. He also traveled extensively throughout the country to care for the people's needs and judge their disputes, rather than waiting for them to come to him. Both the oxen he sacrificed and the donkey he rode were his own.

The IRS recognizes that the cost of using a personal car for business travel should be reimbursed by the employer, and the reimbursement is considered a refund – not taxable income. Even miles driven for charity are recognized by the IRS, although at a substantially lower rate. Taxpayers can use the “optional standard mileage rates” issued by the IRS, or if they prefer, calculate “the actual costs of using their vehicle.” When Moshe and Shmuel traveled on strictly community business, they did not expect, ask for, or receive, a single cent back on expenses.

Clean Accounting

The expense account and reimbursement form can be major temptations. With a little ingenuity, it is not that difficult to invent and then justify any number of personal expenses as business related. *Chazal* tell us that the majority of people sin with theft, the minority with forbidden intimate relations, and everyone with *avak lashon hara*¹ (*Baba Basra* 165a). Theft does not only mean dramatic deeds like breaking and entering, purse snatching, or billion dollar embezzlement schemes. It includes even the very smallest sums, regardless of whether the victim is a Jew or non-Jew (*Shulchan Aruch, Choshen Mishpat* 348:1-2, 359:1).

The *Ramchal* discusses the concept of “[spiritual] cleanliness,” a broad term encompassing “all the details of all the three hundred and sixty-five negative commandments.” He points out that while the *yetzer hara* tries to trip us up with *any* type of sin, there are some where the craving is especially strong, pushing us to find even more excuses and justifications than usual. Here, the *Ramchal* says, we need to work harder to overcome the *yetzer hara* and keep ourselves free of sin (“clean”). He cites *Chazal*: “Theft and forbidden intimate relations [are sins which] a person’s soul craves and longs for” (*Chagigah* 11b).

The *Ramchal* describes in detail the many pitfalls related to financial dishonesty in eerily modern terms: “We see that although most people do not commit robbery in public – literally taking another’s money and putting it in their own pocket – even so, most do taste the flavor of theft in their business dealings, by allowing themselves to profit from another’s loss. And they say, ‘making money is different.’” Apparently, “business is business” is an ancient excuse which continues to retain its popularity.

The *Ramchal* goes on to list the many Torah ordained prohibitions related to theft. Theft is a very complex topic, he writes, because “it is not only the obvious, well known acts of deceit or theft which are forbidden” (*Mesillas Yesharim*, Chapter 11).

The KPMG report lists four “common types of expense report irregularities.”

1. *Claiming personal expenses as business expenses: This is the most widespread of all. It can include listing a family dinner at a restaurant as a “business development expense,” or the costs of a social evening with friends as a*

¹ Talk which is not actual *lashon hara* (forbidden gossip) but which leads to *lashon hara* (see *Shaarei Teshuvah, Shaar Shelishi*, 226).

business meeting, because the conversation included some useful business discussion.

2. *Overstating expenses: This involves doctoring real expenses in the employee's favor. Examples are making a purchase, applying for reimbursement, and then returning the item and pocketing the refunded money; rounding up claims on payments made in cash, or on other expenses for which there is no documentation, and more.*
3. *Fictitious expenses: These have no basis in fact at all; the employee invents expenses and submits them.*
4. *Multiple reimbursements: claiming the same expense more than once, in the hope of being reimbursed at least twice.*

The limits on all four varieties will depend on how brazen the employee is, and what he thinks will pass unchallenged.

Industry Standard

While even minimal amounts unjustly appropriated by an employee are considered theft, the *Shulchan Aruch* rules that an employer is expected to provide certain items, including benefits and expenses, for his workers. These may be defined by an explicit agreement between the employer and employee, or a clearly stated company policy.

In the absence of an explicit agreement or company policy, local custom (*minhag hamedinah*), or as is more common in our times, industry standard, plays a major role in determining reasonable working hours, and what the employee should be receiving from his boss beyond his basic wage. The *Rema* points out that custom is established by ongoing consistent practice, and not by isolated incidents.

If there is no industry standard, the employer is not obligated to provide any extras, based on the halachic principle that the burden of proof rests with the party demanding payment.² If the employee feels that more is owed to him, it is up to him to prove it (*Aruch HaShulchan, Choshen Mishpat 331:6*).³

Another relevant factor in deciding who is responsible for expenses is the nature of the work arrangement. A salaried employee (*po'el*) who incurs work related expenses is considered to be the employer's messenger in spending that money, and he is routinely reimbursed. A contractor who is paid per job (*kablan*) usually builds the expenses into his total fee, and cannot demand extra payment to cover them without prior agreement (*Pis'chei Choshen, Hilchos Sechirus, Chapter 8, 9*).

In contemporary terms, it is assumed that the employer covers overhead costs – the staff does not pay for office rent, utilities, insurance and the like out of their salary. The bill presented by a consultant or freelancer working out of his own home or office is his total fee. Unless otherwise stated, he is not additionally reimbursed for his operating costs.

² This concept is mentioned numerous times in the *Mishnah* and *Gemara*, for example in *Baba Kama* 35b and *Baba Metzia* 153a.

³ See Chapter 17, "On the House? Personal Use of Office Supplies" for an extensive discussion of these principles.

Business vs. Personal

Practically speaking, when there is no explicit prior agreement or company policy concerning expenses incurred by the employee, who pays for what?

Some expenses are clearly business related, and should be covered by the employer. A typical business trip involves expenditures for plane fare, airport parking, cabs to and from the airport, and depending on the length of the trip, a hotel stay. The employee would not have incurred these expenses had he stayed at home, so they have a legitimate place on the expense account or reimbursement form.

What of expenses which are more personal? For example, the employee will need to purchase food while he is away, but had he been at home during that time, he also would have needed to eat. While eating at home would presumably have cost less, are his meals a business or personal expense? Is calling home – possibly an expensive overseas call – an expenditure related to the trip? On the one hand, the call is personal, but on the other, had he been at home, he would not have needed to make that call.

What about daily transportation to work? In Israel it is standard practice for the employer to pay for the worker's bus card, usually but not always a monthly free pass. In the United States an employee's commuting costs are rarely covered, but there will occasionally be some employer participation, for example, a monthly car allowance. Some of these issues are governed by *minhag hamedinah* when there is a widespread standard policy. Others are more open to interpretation.

In 1775, George Washington was appointed Major General and Commander-in-Chief of the Continental Army. He nobly refused a salary, asking only that his expenses be covered. As it turned out, his "expenses" per year were nearly double his future annual salary as president. Among other items on the bill were over \$6,000 for wine and liquor for a period of seven months; nearly thirty-two dozen eggs in the space of a single month; over eighty dollars – four times the monthly wage of a captain in the army – for a Russian leather "letter case"; and a truly staggering amount for lavish food supplies, even during the terrible winter of 1777-1778, when his army starved and froze in Valley Forge.

While many items were only indicated by "&c." and "ditto," and some receipts were lost or illegible, Congress reimbursed him without complaint. Washington's total expenses for eight years of army service came to \$449,261.51 in 1780 dollars, the equivalent of nearly \$8 million in 2015. Washington offered to make the same arrangement when he became president, but Congress declined, settling instead on a more economical salary of \$25,000 a year (History House, "Put it on Washington's Tab").

Exceptions to Minhag HaMedinah

While *minhag hamedinah* is a very powerful factor in determining who is responsible for a given business expense, there may be circumstances which override it. The *Terumas HaDeshen*⁴ discusses the following case: Reuven hired Shimon to travel

⁴ Responsa of Rav Yisrael Isserlin (1390-1460), one of the great *Chachmei Askenaz*, a *rav, posek*, and *rosh yeshivah* whose halachic rulings are frequently cited by later *poskim*.

abroad to deliver documents for him. Shimon was to return within three weeks. They settled on a payment of ten gold coins, a generous fee for this type of service. Before departure, Shimon sought out Reuven to ask him to advance his travel costs, but was unable to locate him. He did, however, mention to a few people that he expected Reuven to reimburse him for out-of-pocket expenses in addition to the fee.

Shimon returned from the business trip and submitted a bill for travel costs. Reuven refused to pay the bill, maintaining that the ten gold coins they had agreed on was above the going rate, and included travel costs. Shimon, on the other hand, said that it is standard practice for the employer to pay travel costs, in addition to the actual fee.

The *Terumas HaDeshen* ruled in Reuven's favor. The amount of the fee – which even Shimon admitted was unusually high for this type of work – was itself an indication that it included all expenses. Reuven did concede that ordinarily, costs are additional to the basic fee. In this case, though, the very fact that the fee was an especially large sum was viewed as proof that it covered the entire job, expenses included (*Responsa Terumas HaDeshen* 323).

We see that the *Terumas HaDeshen's pesak* recognizes the basic criterion of standard business practice. In this particular instance, the specific circumstances of the case were an exception to the rule, but in general, the *minhag* would apparently be the decisive consideration.

The *Ketzos HaChoshen*⁵ questions the *Terumas HaDeshen's* ruling. The *halachah* in the *Mishnah* is that an employer cannot change the terms of employment, demanding that the employee work longer or different hours than is customary, even if he pays for the extra time. This is the ruling in the *Tur* and *Shulchan Aruch* – they do not suggest that the additional pay outweighs standard practice.

The *Ketzos* writes that had the employer intended to deviate from local or industry standards, he would have had to make this explicitly clear in advance, at the time the worker was hired. The same would be true of covering travel costs. If it is standard practice for the employer to pay for business related travel, the fact that he overpaid on the fee would not indicate that those costs were included in the price.

In the *Terumas HaDeshen's* case of “Reuven and Shimon,” writes the *Ketzos*, if Reuven did not intend to comply with standard practice and cover travel expenses in addition to the basic fee, he should have said so to begin with, when they settled on the terms. Since he did not, we defer to *minhag hamedinah*, regardless of the fact that he was paying Shimon above the going rate (*Ketzos HaChoshen, Choshen Mishpat* 331:1, “*makom shenahagu lazun*”).

Submitting Claims: Practical Lessons

Practically speaking, we can learn three important lessons concerning reimbursements and expense accounts from the sources.

Lesson No. 1: Submit reimbursements promptly

⁵ Classic commentary on *Shulchan Aruch Choshen Mishpat* by Rav Aryeh Leib HaKohen Heller (1745-1812).

All claims, receipts, forms and other paperwork should be submitted to the employer promptly.

When the construction of the Mishkan in the desert was completed, Moshe presented the Jewish people, who had contributed all the money and materials, with a detailed account of how it had been used. He finished the reckoning, and was distressed to discover that he could not account for one thousand seven hundred and seventy-five silver shekels – he just could not remember where they had gone. He immediately understood that this left him open to accusations of pocketing the money. Hashem then enlightened him: the unaccounted-for silver had been used for hooks for the poles of the Mishkan. After Moshe provided a full financial statement, the people’s minds were put at ease (Shmos Rabbah 51:6).

It is possible that had Moshe made an immediate accounting he would not have forgotten this detail, avoiding considerable anguish.

We find a similar concept in the *halachos* of *tzedakah*, concerning a *gabbai tzedakah* appointed by the community to collect and distribute charity funds. If he claims that he loaned his own money to the charity fund, he is taken at his word – but only if he makes the claim while he is still holding the position. He is not asked to take an oath as long as he is still on the job, but after that, his word is viewed as doubtful (*Shulchan Aruch Yoreh Deah 257:6*).

In the workplace, expense reports and reimbursement claims submitted promptly are more readily accepted than old ones which surface at a later time.

Lesson No. 2: Stay above scrutiny

When submitting claims, we should not only *be* clean, we should also *look* clean. Good substantiation of expenses – receipts, credit card bills and the like – show that the items on an expense account or reimbursement form are real and legitimate.

Here too, we can learn from Moshe Rabbeinu’s experience in handling public funds.

Why did Moshe Rabbeinu feel the need to present an itemized accounting of the money spent on the Mishkan? Hashem Himself testified that Moshe was impeccably honest: “Not so My servant Moshe. Of all My house, he is the most faithful” (Bamidbar 12:7). Wasn’t that enough? Apparently not, because Chazal tell us that Moshe heard some rumors behind his back. The more cynical members of the nation were saying, “Would you look how fat [Moshe] ben Amram’s neck is getting?”

Their companions replied, “It is all from what he took from us. With all the money donated for the Mishkan passing through his hands, it is impossible that he did not take some for himself. Can there be any question where his wealth came from?” When Moshe heard this, he was determined to account for every last penny (Shmos Rabbah 51:6, Etz Yosef).

Everyone, no matter who he may be, should make sure to remain well above suspicion. According to some commentaries, the *Mishnah* and *Gemara* rule that the prohibition of *chashad* (causing suspicion of oneself) is Torah ordained, derived from the verse, “And you shall appear sinless [literally “clean”] before Hashem and before Israel” (*Bamidbar 32:22*, cited in *Shekalim 3:2*; see also *Meiri, Shabbos 23a*). Simply

arousing suspicion that our actions are improper, even if there really is nothing wrong, is a prohibition on its own.

The same principle applies to submitting reimbursements. The relatively easy opportunities for fraud – and as a result, the prevalence of misreporting – make claiming business expenses an especially sensitive area. We may know that we are honest, and the Al-mighty knows that we are honest – but this fact should be equally obvious to the boss and/or accounting department reviewing our expense and reimbursement forms. Good documentation will show that our claims are honest and legitimate.

We can draw another parallel from the laws of *tzedakah*. The *Shulchan Aruch* writes that a *gabbai tzedakah* is not subjected to the same scrutiny in financial dealings as others. He is considered trustworthy, and as such, allowed extra latitude both in how he distributes the money, and in providing an exact accounting to the community. One reason for this latitude is that many recipients are unwilling to have anyone know that they are taking charity, calling for special tact and discretion on the part of the *gabbai tzedakah*.

While the *gabbai tzedakah* is considered trustworthy, he must refrain from certain transactions which might arouse suspicion that he is keeping charitable assets for himself. For example, if he has an accumulation of *tzedakah* money in small denominations which he would prefer to change into larger bills, he should make the exchange with someone else, and not with his own money. The same would be true of selling food left over in the community soup kitchen. He should sell it to someone else rather than purchasing it himself, because of the concern of *chashad* (*Shulchan Aruch Yoreh Deah 257:2*).

Rav Eliyahu Chaim, the father of the legendary Ben Ish Chai, was a distinguished talmid chacham who held a number of positions in the Baghdad kehillah, among them management of the community charity fund. He was asked to provide an accounting of the monies he managed but he refused, arousing some unpleasant rumors. After his death, it turned out that Rav Eliyahu Chaim, a wealthy man, had distributed large sums of his own money to charity in the name of the fund, a fact which he preferred to keep secret (Ben Ish Chai, Toldosav, Korosav, U'Morashto L'Doros, Ahavat Shalom Publications, p. 38, citing Ketz HaYamin).

The *Rema* adds that even though these officials are not technically obligated to provide an accounting, “in any case, in order to be ‘clean before Hashem and before Israel,’ it is advisable for them to give an accounting.” This applies in the case of an upstanding *gabbai tzedakah*. However, one who is something less than upstanding, or who forced his way into the position, should certainly supply an accounting. The same is true of all those who hold community positions.

The *Noda B'Yehudah* adds that anyone who is empowered to spend money on another party's behalf must give an open, detailed financial accounting, with a *gabbai tzedakah* as the only exception (*Responsa Noda B'Yehudah, Mahadura Tanina, Yoreh Deah 157*).

Lesson No. 3: Clean accounting

Accounts submitted should be “clean” and unambiguous. Vague or questionable entries are likely to arouse suspicion.

The *Pis'chei Choshen* cites a responsa from *Avodas HaGershuni*⁶ on the subject of clean accounting. “Reuven” had been a communal tax collector, the equivalent of a modern-day comptroller, in Tiberias, until he was removed from the position by the governor. The Jewish community asked him to bring in his books so that they could settle accounts at the conclusion of his tenure.

Perusing the ledger, the *kehillah* officials noticed something very odd: the books had an orderly listing of income and expenditure, which added up to a subtotal at the bottom of each page. However, there were also various other notations, added between the lines and tacked on at the end, which did not match the computation of the subtotal. Based on these rather suspicious-looking entries, Reuven claimed that the community owed him a large sum of money. The community officials disagreed, maintaining that the obviously falsified entries had lost Reuven his credibility. Reuven defended himself by saying that the books had often been locked up in the *kehillah* offices, so that some of the entries had been made at later dates.

In a lengthy responsum, the *Avodas HaGershuni* ruled in favor of the *kehillah*. While a public appointee is generally deemed reliable without having to back up his words with an oath, in this case, the bad bookkeeping worked against Reuven, and he was no longer considered trustworthy. He had offered excuses, but the *Avdoas HaGershuni* points out that there is no end to excuses, and the fact that the additional entries did not tally with the subtotals spoke very badly against him. He ruled that the *kehillah* owed the former tax collector nothing.

Black, White, or Gray?

Reimbursements and expense accounts are not black-and-white. As the KPMG report notes, there are many gray areas which are open to interpretation. For example:

- An employee on a business trip incurred legitimate expenses for meals, but lost the receipts. Can he add the money spent on food to another bill, such as a blank taxi receipt where he fills in the amounts himself?
- An employee books a flight for a business trip on his personal credit card. He is reimbursed, but the trip is cancelled and the flight is non-refundable. No other business trips have come up in the meantime, and the airline credit for the flight, already paid for, is about to expire. Can the employee use the airline credit for a vacation trip, rather than letting it go to waste?
- An employee works for more than one employer, and some of his expenses overlap. Is it legitimate for him to charge both employers for the same travel costs, office supplies and similar expenses?

Summary:

There is obviously great potential for *chillul Hashem* on the one hand, and *kiddush Hashem* on the other, in the realm of expense accounts and reimbursements.

⁶ Responsa of Rav Gershon Ashkemazi (1615-1693). Following the expulsion of the Jews from Vienna, he was appointed rabbi of Metz, where he established a well-known *yeshivah* which attracted students from all over Europe.

Adhering to a few basic guidelines will help avoid problems, both in terms of halachic standards and with the employer.

1. Ideally, there should be an explicit policy and/or agreement defining which expenses are the company's responsibility, and which are the employee's responsibility.
2. In the absence of an explicit policy or agreement, *minhag hamakom* governs.
3. Clean accounting is critical.
4. Submit reimbursements promptly.
5. Provide good substantiation, including receipts, credit card statements, used plane tickets, and any other back-up documentation.
6. Be open and honest with your employer, and obtain pre-approval for "gray areas."