

Filing, Reporting and Paying Taxes and *Dina D'Malchusa Dina*

The tax returns filed by Rav Shimon Schwab, revered rav of K'hal Adath Jeshurun in Washington Heights, New York, attracted the attention of the United States Internal Revenue Service. He was summoned for an audit, because the IRS could not believe that a man of such modest means was giving the amount of charity reported on his return. The rav's tax forms also listed literally everything he received, even gifts from friends. "I don't want to be a bedi'eved Yid," he would say, 'I want to be a lechat'chilah Yid.'"

*An accountant from the kehillah represented Rav Schwab at the audit. When it was over, "the IRS agent declared that never, in all his years as an auditor, had he met anyone who was so forthcoming and meticulous in reporting income and in documenting all contributions. He followed that with a letter to Rabbi Schwab saying that the latter's scrupulous honesty 'had restored my faith in humanity'" ("The Ish HaEmes: The Man of Unimpeachable Integrity, Rabbi Shimon Schwab," by Rabbi Eliyahu Meir Klugman, *The Ethical Imperative - Torah Perspectives on Ethics and Values*, p. 562).*

*In sharp contrast, a New York attorney earned a staggering \$183,000 monthly as a partner in a major law firm, no doubt very taxable income. In 2009, this attorney was convicted for willfully failing to pay taxes on \$10.8 million in income over an eight-year period. After pleading guilty to four misdemeanors related to tax evasion, he was sentenced to twenty-eight months in a federal prison, and his law license was suspended. This formerly wealthy man's appeal was handled not by a high-priced colleague, but by a court-appointed lawyer (*ABA Journal*).*

A question presented to my Jerusalem *yeshivah* students elicited a response that was unanimous, regardless of their profession and country of origin: the best thing about work is the paycheck, and the worst is taxes. No matter where we live and work, almost from time immemorial, taxes in one form or another have always been an inevitable part of life. Are we in fact obligated by *halachah* to pay taxes? If so, must we be quite as meticulous as Rav Schwab?

Part 1: Facing Taxes

Much of the discussion in the *Gemara* and *poskim* on the question of taxes is related to the halachic concept of *dina d'malchusa dina*, "the law of the land is law,"¹ and a monarch's right to levy taxes.

Chazal listed three instances where it is permitted to make a vow, even if we have no intention of fulfilling it: confrontations with murderers, thieves, and tax collectors. Even if our property is not *terumah*,² we are permitted to say that it is, and make a

¹ See Chapter 23, "Law Abiding Citizens: *Dina D'Malchusa Dina*."

² *Terumah*, the portion of the crops set aside for the *Kohen*, is one of the twenty-four *Matnos Kehunah* (Priestly Gifts). Consumption of *terumah* is forbidden to anyone other than a *Kohen*. Apparently, in the time of the *Gemara* it was assumed that even people who were seizing property illegally would still have some degree of respect or fear, and they would refrain from eating forbidden foods like *terumah* (*Rosh*).

vow to back up this claim.³ We would also be permitted to say that our property belongs to the king, even if it does not, so that it will not be seized in payment of so-called “taxes.”

“Tax collectors” seems to be an unlikely third category on the list. If “the law of the land is law” (*dina d’malchusa dina*), including the obligation to pay taxes,⁴ why are “tax collectors” lumped together with dangerous criminals, and how can we swear falsely in order to evade taxes?

No Limits

The *Gemara* suggests two answers to this question. One is that it refers to a tax collector whose execution of the laws is unjust (a deficiency in the aspect of “*dina*”), and the other is that he is not authorized to collect taxes (a deficiency in the aspect of “*malchusa*”).

In the first answer, *Chazal* say that we are permitted to take a false oath in dealing with a *mochess she’ain lo kitzvah* – literally, “a tax collector who has no limits.” Rashi explains, “He takes whatever he wants.”

The *Rishonim* suggest two explanations of the term a “tax collector who has no limits.” The first is that “at times he takes a little, and at times, a lot, as he wishes.” In other words, he is not collecting taxes equitably. Although he is authorized, he does not carry out his task in a fair and just manner.

A second explanation is that since he has no limits, he takes more than the king authorized him to collect. While he was appointed by the king, he is exceeding his authority, and if the king were aware of his actions he would be angry. Although he was commissioned to collect taxes, he is a thief nonetheless (*Shitah Mekubetzes, Nedarim 28a*).

No Authority

The second answer in the *Gemara* is that the *mochess* (tax collector) to whom we can swear falsely is a *mochess ha’omed me’eilav* – a strongman who collects taxes on his own, without being appointed by the king (Rashi).

If a tax collector *is* authorized by the government and *is* conducting the collection legally and equitably, the obligation to pay taxes falls under the heading of *dina d’malchusa dina*: from the standpoint of *halachah*, the law of the land is law, and we are required to pay.

The Obligation to Pay

³ For example, by saying, “If this wheat is not *terumah*, then my entire crop is forbidden to me as if it were a sacrificial offering.”

⁴ The *Rashbam* writes, “All taxes and levies and legislation which monarchs customarily institute in their kingdoms is law, because all those living in the country accept upon themselves the king’s laws and legislation, making it a *din gamur* – an absolute obligation” (*Rashbam, Baba Basra 54b, “v’ha’amar Shmuel, dina d’malchusa dina”*).

The Rambam and the *Shulchan Aruch* both rule that if a tax collector is appointed by the king to collect a fixed percentage (such as “a third or a quarter”), or a specified lump sum, the tax must be paid, because of *dina d’malchusa dina* – we are obligated to obey the king’s laws. “And not only that, one who evades this tax transgresses, because he is stealing what belongs to the king.” This ruling applies equally to Jewish and non-Jewish kings (Rambam, *Hilchos Gezeilah* 5:11; *Shulchan Aruch Choshen Mishpat* 369:6). The *Rema* adds that the transgression involved is the Torah-ordained commandment, “Do not steal” (*Vayikra* 19:13).

What types of taxes can the government legitimately levy on its citizens?

Progressive Taxes

The Rambam writes that if a ruler unlawfully taxes a specific individual, the “tax” is theft. However, any tax law which is universal, and does not discriminate against a single individual, is not theft and must be paid (Rambam, *Hilchos Gezeilah* 5:14). According to a number of *Rishonim*, a tax that is standardized, whether as a fixed sum per person, per field, or the like, is the king’s due, and payment of such taxes qualifies as *dina d’malchusa dina* (*Mordechai, Gittin, Perek Hameivi Get* 325; Rambam, *ibid.* 5:12; *Shulchan Aruch Choshen Mishpat* 369:7).

Many countries employ some form of a progressive or graduated tax system in which taxes are individually calculated, based on the citizen’s earnings: the more he earns, the higher the percentage he pays. Is this a fair and equitable tax system, or does it discriminate against high-earners?

The *Meiri* describes what is in essence a progressive tax system, and writes that it is permitted, as long as it is applied equally to all citizens. “Even if the king legislates that everyone must pay him a fixed amount per year, or a certain amount of his business transactions, or an amount which is in keeping with his earnings...or all the like, even if it is contrary to our laws, it is still law” (*Meiri, Baba Kama* 113b). We see from the *Meiri* that *dina d’malchusa dina* applies to a progressive tax system, even if that tax is not in keeping with halachic methods.

Fines for Tax Evasion

IRS Tax Tip 2012-74 informs United States taxpayers of several pertinent facts. “The law provides that the IRS can assess a penalty if you fail to file, fail to pay, or both. While “the IRS will work with you... if you cannot pay all the taxes you owe,” there are a number of points worth keeping in mind:

- *“If you do not file by the deadline, you might face a failure-to-file penalty. If you do not pay by the due date, you could face a failure-to-pay penalty.”*
- *“The penalty for filing late is usually five percent of the unpaid taxes for each month or part of a month that a return is late,” up to twenty-five percent of the unpaid taxes.*
- *“If you do not pay your taxes by the due date, you will generally have to pay a failure-to-pay-penalty of half of one percent of your unpaid taxes for each*

month or part of a month after the due date that the taxes are not paid.” This too can be up to twenty-five percent of the unpaid taxes.

On the more positive side, “You will not have to pay a failure-to-file or failure-to-pay penalty if you can show that you failed to file or pay on time because of reasonable cause and not because of willful neglect.”

Is it legitimate for a government to impose fines for late or unpaid taxes? According to the Rambam and the *Shulchan Aruch*, in a country where the halachic principle of *dina d'malchusa dina* applies, it is legitimate for the government to fine a tax violator by taking double, triple, or even a hundred times as much as he originally owed, even to the point of confiscating all of his property (Rambam, *Hilchos Melachim* 4:1, *Hilchos Gezeilah* 5:12; *Shulchan Aruch Choshen Mishpat* 369:7). *Dina d'malchusa dina* applies to the high late fines as well.

Part 2: Non-payment of Loans to Non-Jews and Taxes

The *Gemara* rules that it is forbidden to steal from a non-Jew. However, if we owe him money, we are permitted to let repayment of the debt ride until he asks for it (*hafka'as halva'ah*), because the debt is considered comparable to a lost item found by the Jew. While the Torah commands us to return lost items (*Devarim* 22:3), this commandment is specific to our relationship with fellow Jews (*Baba Kama* 113b).

In the case of the debt owed to a non-Jew, we can delay repayment only if the non-Jew does not realize that we owe him the money, and there is no concern that it will result in a *chillul Hashem* (*Baba Kama* 113; *Rema*, *Choshen Mishpat* 348:2). If there is a chance that there may be a *chillul Hashem*, we should repay of our own initiative, and not delay until the non-Jewish creditor actively collects the debt.

Theoretically, a non-Jewish creditor may forget about an outstanding debt, or he may be unaware that the money is owed to him. Examples are royalties payable on the sales of a product; payment of a percentage of the profits to the landlord by stores renting space in a mall; an error on the part of a supplier, who inadvertently sends more merchandise than listed on the invoice; and overpayment by a customer. Practically speaking, it is unlikely that these errors will go unnoticed for any length of time, because accounts are examined and any discrepancies do become apparent. Attempting to take advantage of such errors will obviously result in serious *chillul Hashem*.

There is a difference of opinion among the *poskim* as to whether *hafka'as halva'ah* (non-payment of debts) applies only to individual non-Jews, or also to a king or other government where *dina d'malchusa dina* applies.

In many countries, income taxes are withheld by the employer – the employee does not first receive the money and then calculate and pay the required taxes. Nonetheless, there are times when an employee, or more likely, a consultant or other service provider, receives a payment, and it is up to him to compute and submit the necessary taxes to the government. Is this considered equivalent to a loan currently in our possession, which we are permitted to retain until it is claimed by the government? In other words, can we simply not report?

No. 1: Non-payment of taxes is permitted

Rashi, *Rosh* and *Ran* rule that non-payment of taxes is equivalent to letting a loan ride, and is not actual theft (Rashi, *Baba Kama* 113b; *Rosh* *ibid.*; *Ran*, *Nedarim* 28a, “*b’mochess ha’omed me’eilav*”; *Mishneh L’Melech*, *Hilchos Gezeilah* 5).

No. 2: Non-payment of taxes is forbidden

Other *poskim* disagree with this ruling of Rashi, *Rosh* and *Ran*. The Rambam (*Hilchos Gezeilah* 5:11) and the *Tur* (*Choshen Mishpat* 369) write that *hafka’as halva’ah* is permitted in dealing with an individual, but not with a government, due to *dina d’malchusa dina*. This is true even when there is no risk that non-payment will lead to *chillul Hashem* or other potential danger. The *Shulchan Aruch* rules that tax evasion, whether from a Jewish or non-Jewish king, is theft (*Vayikra* 19:13): it steals the king’s due (*Choshen Mishpat* 369:6).

The *Rema* cites an opinion which forbids tax evasion, but rules that after the fact, it is considered *hafka’as halva’ah*, and as such is permitted (*Choshen Mishpat* 369:6). This is difficult to understand: is he saying that tax evasion is forbidden, or that it is permitted?

Rav Moshe Sternbuch⁵ explains this apparent contradiction in the *Rema* as follows. In terms of *dina d’malchusa dina*, we are obligated to pay taxes, and should not evade them. However, after the fact, failure to pay taxes is in the realm of financial law, so that the principle of *hafka’as halva’ah* does in fact apply.

Rav Sternbuch also cites the conclusion of the *Biur HaGra*, who disagrees with the *Rema* and writes that as long as there is no concern for *chillul Hashem*, non-payment of taxes is permitted as *hafka’as halva’ah* (*Responsa Teshuvos V’Hanhagos*, vol. III, 476 and vol. IV, 319; *Biur HaGra*, *Choshen Mishpat* 369:23).

Shulchan Aruch HaRav (*Choshen Mishpat*, *Hilchos Gezeilah U’Geneivah* 15) cites both opinions – some *poskim* prohibit non-payment of taxes, and others permit it. He concludes that a G-d-fearing person should be strict in this regard, in order not to transgress a Torah-ordained prohibition.

Even according to the lenient opinions which permit non-payment of taxes, this is only so if there is no deception, misrepresentation, *chillul Hashem* and the like involved – we are not permitted to lie. Practically speaking, then, we would not be permitted to submit a tax return with underreported income or other inaccuracies, since we also sign a statement that the information on the return is accurate. In addition, the risk of being caught is high, whether for underreporting or not submitting a return at all, which would obviously result in a serious *chillul Hashem*. Accordingly, even in keeping with the more lenient opinions, it is difficult to find a situation where underreporting or failing to report would be permitted.

⁵ Rav Moshe Sternbuch, a contemporary *posek* and *rosh yeshiva* in *Eretz Yisrael*, is the *rosh av beis din* of the *Eidah HaChareidis* in Jerusalem and the author of a wide range of works on *halachah* and other topics, including the five-volume *Responsa Teshuvos V’Hanhagos*.

During a question and answer session in Los Angeles several years ago, a tax attorney asked Rav Asher Weiss⁶ if he is permitted to advise clients about how to take advantage of certain technicalities in the tax code and push the limits of what is legal. Rav Weiss responded that pushing the limits is acceptable – but crossing them is not. Making use of legal loopholes is permitted, but violating the law is not.

Rav Weiss' opinion is entirely in line with United States law. In 1935, Judge Learned Hand ruled that “Anyone 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.” The United States Supreme Court concurred with this decision, but also ruled that it is illegal to distort the tax code in order to evade paying what is legally required (*Helvering v. Gregory*, 69 F.2d 809, 810 (2d Cir. 1934), affirmed, 293 U.S. 465, 55 S.Ct. 266, 79 L.Ed. 596 (1935)).

The United States law differentiates between “tax evasion” and “tax avoidance.” Tax evasion is the illegal nonpayment or underpayment of tax. Tax avoidance is the legal utilization of the tax regime to one's own advantage, in order to reduce the amount of tax owed. “Tax evasion” is illegal, while “tax avoidance,” which works within the law, is legal.

Part 3: Taxes in the Diaspora

The vast majority of *poskim* rule that *dina d'malchusa dina* applies to democratically elected governments outside of *Eretz Yisrael*, payment of taxes included. A number of interesting responsa relate specifically to the question of taxes in the context of *dina d'malchusa dina*.

A *baal teshuvah* in the United States asked Rav Moshe Feinstein⁷ about making amends for improper financial dealings in the past, among them tax evasion and using various methods to avoid paying for telephone calls and subway transportation. Rav Moshe responded that he should certainly do *teshuvah* for these acts, and make a commitment not to transgress again. He should definitely return any stolen goods or items still in his possession. Even if he no longer has the actual item, he may still need to reimburse the owner (*Igros Moshe, Choshen Mishpat*, vol. I, 88:9).⁸ It is clear from Rav Moshe's response that, in his opinion, it is forbidden to evade paying taxes in the United States.

Rav Shmuel HaLevi Vosner⁹ was asked by Rav Ephraim Greenblatt¹⁰ of Memphis, Tennessee about the obligation of an IRS employee to report a fellow Jew's tax

⁶ Rav Asher Weiss is an American-born *rav* and *posek* in Jerusalem. He is the *av beis din* of *Badatz Darkei Horaah*, *rosh kollel* of *Machon Minchas Asher*, and the author of *Minchas Asher*, an extensive series of commentaries on Talmud and *Chumash*, responsa, and other topics.

⁷ Rav Moshe Feinstein (1895-1986) was a revered and world-renowned *rav* and *posek* who led American Jewry for decades. Born in Russia, Rav Feinstein moved to New York in 1936, where he was *rosh yeshivah* of *Mesivta Tifereth Jerusalem*. He was the author of *Igros Moshe*, a nine-volume work of responsa, *Darash Moshe*, and *Dibros Moshe*.

⁸ However, Rav Moshe refers also to the *Nesivos HaMishpat* (*Biurim, Choshen Mishpat* 248:1), who does not require payment after the fact. See also *Shaar HaMishpat*, *ibid.* 2.

⁹ Rav Shmuel HaLevi Vosner (1913-2015) was one of the great *poskim* of recent times. Born in Vienna, he was a student at Rav Meir Shapiro's *Yeshivas Chachmei Lublin*. He settled in *Eretz Yisrael*

evasion. Was this forbidden tale-bearing, or did the obligations of *dina d'malchusa dina* apply? In his response, Rav Vosner wrote that there is no question that paying taxes falls under the category of *dina d'malchusa dina* (Responsa *Shevet HaLevi*, Part 2, 58).¹¹

In contrast, Rav Rephael Bardugo¹² of Morocco ruled leniently on the question of paying taxes, in keeping with the *Ran*: “It is obvious that according to the *Ran*, there is no prohibition against evading taxes. We see that it is common practice everywhere to avoid taxes in any way possible. The strictures of *Chazal* are enough for the Jews to observe – if only they would keep them, without our adding more strictures that are not at all basic halachic requirements” (Responsa *Mishpatim Yesharim* vol. I, 113).¹³

Rav Menashe Klein, author of *Mishneh Halachos*,¹⁴ was asked if it is permitted to evade taxes in a country like the United States, where the government is democratic and does not oppress the citizens. Would tax evasion under such a government be considered *gezel akum*?¹⁵

Rav Klein responded that in his opinion, tax evasion is not classified as *gezel akum*, but rather as *hafka'as halva'ah*, which is permitted. He cites Rashi (*Baba Kama* 113b), who rules that non-payment of taxes is equivalent to letting a loan ride, and is not actual theft. Rav Klein writes that the question of whether or not *dina d'malchusa dina* applies is irrelevant; even in the event that it does apply, we are in any case still permitted to let a loan ride. However, he mentions Rabbeinu Yonah's caution against tax evasion, because it can result in the loss of the tax evader's entire assets (Responsa *Mishneh Halachos* vol. XII, 445).

Practically speaking, the rulings of Rav Bardugo and the *Mishneh Halachos* represent a minority view, and not accepted halachic practice. The vast majority of *poskim* rule that paying taxes outside *Eretz Yisrael* is clearly required by *dina d'malchusa dina*. In addition, even the *Mishneh Halachos* writes in at least two other responsa that we are in fact required to pay taxes, for two reasons. First, tax evasion causes a shortfall in government revenues. To compensate, tax rates for other citizens, obviously including Jewish citizens, will be higher. In this sense, tax evasion causes financial damage to

in 1938. He was the *rav* of Zichron Meir, founder and *rosh yeshivah* of Chachmei Lublin in Bnei Brak, and the author of the eleven volume Responsa *Shevet HaLevi* and other works.

¹⁰ Rav Ephraim Greenblatt (1932-2014) was born in Jerusalem. He was a *talmid* of Rav Moshe Feinstein, and well known for decades as a *posek*, and *rav* and Torah teacher in Memphis, Tennessee. He was the author of the nine-volume *Revevos Ephraim* and other works.

¹¹ After discussing different aspects of Rav Greenblatt's question, Rav Vosner concludes that ideally, one should not take a job which requires him to inform against fellow Jews, even if it is technically permitted, because this is not *mishnas chassidim* (pious practice). See Chapter 20, “Working for the Government: The Prohibition Against *Mesirah*.”

¹² Rav Rephael Bardugo (1747-1821) of Meknes was one of Morocco's great Torah scholars, known as *HaMalach Rephael* (“The Angel Rephael”). He was a *dayan* who introduced community bylaws to limit spending on family celebrations, and the author of many works on a range of Torah topics.

¹³ See also *Teshuvos V'Hanhagos* (vol. IV, 319), where Rav Sternbuch declined to respond to the question of whether *dina d'malchusa dina* applies outside *Eretz Yisrael*, and wrote that the policy of *rabbanim* has traditionally been to refrain from ruling on the issue of paying taxes in the Diaspora. Nonetheless, he concludes that one who is strict in this regard will be blessed.

¹⁴ Rav Menashe Klein (1924-2011), the Ungvarer Rav, was a prominent *posek* in New York and Jerusalem. He was the author of the eighteen-volume *Mishneh Halachos* and numerous other works.

¹⁵ Theft from a non-Jew. The *Shulchan Aruch* rules that *gezel akum* is forbidden.

fellow Jews, which is forbidden. Second, paying taxes is required by law in the countries where we reside, so that failure to pay violates *dina d'malchusa dina* (Responsa *Mishneh Halachos* vol. VI, 311 and vol. 17, 125).

Even according to the lenient opinions, which permit non-payment of taxes, this is only so if there is no deception, misrepresentation and the like involved. The lenient minority opinions would also prohibit non-payment in our times because of the high risk of *chillul Hashem* (See Responsa *Be'er Sarim*, Vol. 6, 90, and more generally, *Kovetz Ohr Yisrael*, vol. 57, pp. 128-140).

Part 4: Taxes in *Eretz Yisrael*

As we see, then, payment of taxes outside of *Eretz Yisrael* is obligatory. There are different opinions among the *poskim* concerning payment of taxes in *Eretz Yisrael* today, where the government is, for the most part, not Torah observant and if anything, is opposed to Torah. Are we obligated to pay taxes to this government as well?

Taxes in *Eretz Yisrael* are Obligatory

On at least two occasions, Rav Elyashiv¹⁶ was asked if *dina d'malchusa dina* applies to paying taxes to the Israeli government.¹⁷ On both occasions, he replied that it does (see also *Piskei Din HaRabbanim*, vol. VI, 376-384).

Rav Ovadiah Hadayah¹⁸ of Jerusalem wrote that *dina d'malchusa dina* applies to elected governments, not only to an actual *malchus* (monarchy). The same is true of the Israeli government, which is elected by the citizens (Responsa *Yaskil Avdi*, vol. VI, *Choshen Mishpat* 28:2). Rav Ovadiah Yosef's¹⁹ opinion was similar: he wrote that practically speaking, we should obey the laws of the state, including paying taxes and customs (Responsa *Yechaveh Daas*, vol. V, 64).

Rav Yisrael Grossman²⁰ responded to a related question concerning the tax authorities in Israel. The Israeli government confiscates property, including cars and expensive jewelry, from citizens who have not paid their taxes. These items are sold cheaply at auction to cover the owner's debt. Is the government within its rights in seizing the property, as *dina d'malchusa dina*? Or are they acting wrongly in taking it against the owner's will? Practically speaking, are we permitted to purchase such items, or are they considered stolen property?

¹⁶ Rav Yosef Shalom Elyashiv of Jerusalem (1910-2012) was revered and renowned as the "*posek hador*," the leading halachic authority of our generation.

¹⁷ R. Yechezkel Lazar of Jerusalem and Rav Dovid Meyerfield, a *rosh chaburah* in Mir Yeshiva in Jerusalem, each asked this question and received the same answer.

¹⁸ Rav Ovadiah Hadayah (1890-1969) was a *dayan* and *rosh yeshiva* of Yeshivas Beis E-l, and *rav* in Petach Tivkah. He was the author of *Yaskil Avdi*, an eight-volume work of responsa, and many other *sefarim*.

¹⁹ Rav Ovadiah Yosef (1918-2013), the great Sephardic *posek*, was renowned for his vast knowledge of Torah and his lifelong *hasmadah*. He was the Sephardic Chief Rabbi of Israel and a prolific author. Among his works are Responsa *Yabia Omer* and Responsa *Yechaveh Daas*.

²⁰ Rav Yisrael Grossman of Jerusalem (1923-2007) was a *rosh yeshiva*, *dayan* and the author of many *sefarim*, including several volumes of responsa.

Rav Grossman responded that *halachah* permits buying auctioned articles confiscated for non-payment of taxes. In addition, it is possible that if the original owners participated in municipal and national elections, they have demonstrated that they accept the government's authority to levy taxes, so that *dina d'malchusa dina* would apply, even according to the *Ran*.²¹

He adds an important statement about the attitude of religious Jews towards the secular Israeli government. He writes that "the heart of every G-d-fearing Jew is pained and anguished over the destruction of our faith [in Israel today –] the permissiveness; the heresy prevalent in the public schools, where hundreds of thousands of Jewish children are educated without religious belief and without Torah; the public desecration of Shabbos; and the terrible immodesty, may G-d spare us. However, G-d-fearing citizens rely on the concept of "*bereirah*," which means that they effectively designate their tax dollars for permitted, worthwhile purposes" (Respona *Netzach Yisrael* 33).

Amudei Mishpat (7) expands on the concept discussed by Rav Grossman. He writes that one who "benefits from government services like National Insurance (*Bituach Leumi*), the highways, street lights, health insurance (*kupat cholim*), the police force, fire department, rescue services, and the army, cannot come along and say that when it comes to paying taxes, [the government's] laws are not law. If so, he would have to pay [the government] for each of these services, at the rate for private provision of the service," a hundred times more than the citizens generally pay. He continues, "One cannot take advantage of what the government provides and enjoy the benefits, and [at the same time] maintain that he does not accept their imposition of taxes. This would appear to be theft from the community as a whole, who are paying the taxes to provide these services."

He takes this a step further, and points out that one who maintains that the Israeli government is not empowered to impose legislation and taxes should be paying a higher price for the bread he eats, since the bakeries are subsidized by the government. The same would be true as well of all other staple foods sold at subsidized prices.

Rav Shlomo Zalman Auerbach²² also addressed the question of the secular nature of the Israeli government. "While [it]... does not operate according to Torah law, even if we conclude that we are not obligated to adhere to laws which are contrary to Torah law, why should this mean that it is permitted to evade taxes and the like? Bottom line, the imposition of taxes makes logical sense. It is possible that if [the government] were to consult with community leaders, they would agree to this as well. Even if the government does not abide by Torah law, how can we say that it is therefore permitted to steal?" (*Minchas Shlomo, Nedarim* 28a, p. 173).

²¹ This refers to the *Ran*'s ruling that non-payment of taxes is equivalent to letting a loan ride, and is not actual theft (see above, "Non-payment of taxes is permitted") and his ruling that *dina d'malchusa dina* does not apply to *Eretz Yisrael*, because it is the shared property of the people (see below, "Taxes in *Eretz Yisrael* are not obligatory").

²² Rav Shlomo Zalman Auerbach of Jerusalem (1910-1995) was a revered *rav*, *rosh yeshivah* of Yeshivas Kol Torah, and renowned *posek*. Many of his *sefarim* are on a variety of halachic topics. His *Meorei Eish*, published in 1935, was the first *sefer* on the subject of the use of electricity on Shabbos.

Rav Hershel Schachter²³ writes that in contemporary society, taxpayers have the status of partners. They all need the myriad services provided by the government and contribute to the costs, including the salaries of government employees. One who evades taxes steals not from the king, as in former times, but from the other partners – his fellow citizens who do pay tax (Rav Hershel Schachter, Taxation and Dina Demalchusa, TorahWeb.org, 2005).

Taxes in *Eretz Yisrael* are Not Obligatory

In our discussion of the principle of *dina d'amalchusa dina*²⁴ we mentioned the *Ran*'s ruling that *dina d'malchusa dina* does not apply to *Eretz Yisrael*, because it is the shared property of the people (*Ran, Nedarim* 28a, “*b'mochess ha'omed me'eilav,*” citing *Tosfos; Rosh*, Chapter 3, 11; *Rashba*, citing Rabbi Eliezer MiMetz, and other *Rishonim*). While this *pesak* of the *Ran* is very well known, practically speaking, we do not rule like the *Ran* in this regard. The Rambam (*Hilchos Gezeilah* 5:11), *Tur* and *Shulchan Aruch (Choshen Mishpat* 369:6) all rule that “a king's law is law, whether the king is a non-Jew or a Jew.” This is the opinion of a number of recent *poskim* as well.

Nonetheless, there are other halachic authorities who rule that *dina d'malchusa dina* does not apply to taxation by the modern State of Israel. This is the opinion of the Chazon Ish²⁵ (cited in *Responsa Minchas Yitzchak* vol. 9, 110) and of Rav Nissim Karelitz, *shlita*.²⁶ Their ruling is summarized by Rabbi Elazar Needham in *Darkei Mishpat*. He writes that the laws instituted by democratically elected governments outside *Eretz Yisrael* are halachically binding. However, the Chazon Ish ruled that this is not the case in contemporary *Eretz Yisrael*, and this continues to be the ruling of Rav Nissim Karelitz and his *beis din*. Therefore, evading customs and taxes in the Diaspora is forbidden, but there is no such prohibition in *Eretz Yisrael*, unless there is reason to be concerned for a *chillul Hashem* or for danger (*Darkei Mishpat*, Chapter 13, “*Dina D'malchusa,*” p. 213-217, 2). “Danger” includes a jail sentence, or financial harm in the form of fines, interest, or other fees.

Rav Moshe Sternbuch also rules that *dina d'malchusa dina* does not apply to *Eretz Yisrael* in our times, for another reason. He has heard that taxation in Israel depends to a great extent on “*protektzia,*” at the discretion of various officials in the system. In this sense they are like the “tax collector who has no limits” mentioned in the *Gemara*, with every individual cutting the best deal he can with the authorities. Under such circumstances, writes Rav Sternbuch, *dina d'malchusa dina* would not apply even to a non-Jewish government (*Teshuvos V'Hanhagos*, vol. III, 476).

²³ Rav Hershel Schachter is *rosh yeshivah* and *rosh kollel* at Rabbi Isaac Elchanan Theological Seminary of Yeshiva University. He is a prominent *posek*, halachic advisor for the kashrus division of the Orthodox Union, and a prolific author.

²⁴ See Chapter 23, “Law Abiding Citizens: *Dina D'Malchusa Dina.*”

²⁵ Rav Avraham Yeshayahu Karelitz of Bnei Brak (1878-1953), known by the title of his halachic works as the *Chazon Ish*, was an outstanding halachic authority and Torah leader whose influence is still felt decades after his passing.

²⁶ Rav Nissim Karelitz, a nephew of the Chazon Ish, is a *rav, av beis din* and *rosh kollel* of *Kollel Chazon Ish* in Bnei Brak, and the author of *sefarim* on halachic topics.

Dina d'malchusa dina does not apply to a corrupt government. How does corruption in the State of Israel measure up to other countries worldwide? According to the Corruption Perceptions Index for the year 2014, of one hundred seventy-five countries, Denmark receives the best ranking (no. 1). The United Kingdom ranks no. 14, and the United States, no. 17. Israel, together with Spain, ranks no. 37. At the very bottom of the list are Sudan, North Korea and Somalia. Apparently, at least in comparison to other countries, Israel is not all that bad.

Even these halachic authorities, who rule leniently concerning payment of taxes to a secular Jewish government in Israel, mention a number of important exceptions.

Taxes for Specific Government Services

Arnona (real estate taxes) and *Bituach Leumi* (National Insurance) are taxes which cover specific services, and must be paid. Evading payment is stealing from the public (*Darkei Mishpat* *ibid.* 2, note 8-9, citing Rav Nissim Karelitz).

Government Benefits and Subsidies

The government supplies various benefits for eligible citizens, including income supplements, discounts on appliance purchases, rent subsidies, housing grants, and health benefits. *Darkei Mishpat* writes, "It is forbidden to falsify information to the government in order to receive more than one is entitled to, whether outside *Eretz Yisrael* or in contemporary Israel, because this is falsehood, as well as forbidden theft of public funds." One who took government funds unjustly should return them (*ibid.*, p. 226-227, 7, citing Rav Nissim Karelitz).

Darkei Mishpat cites Rav Moshe Feinstein's response to a question concerning government funding for Torah institutions in the United States. Rav Moshe writes very clearly that it is forbidden for an institution to take more than it is legally entitled to, even if a sympathetic government official is willing to give more. It is certainly forbidden to lie concerning the number of students in the institution and the like. "Not only is this theft, it also transgresses the major prohibitions of lying, falsehood and deception, as well as *chillul Hashem*, and disgraces the Torah and its students. There is no way in the world to permit this. Just as *HaKadosh Baruch Hu* hates theft in an *olah* sacrifice,²⁷ so too, *HaKadosh Baruch Hu* hates theft in the support of Torah and its students. He adds that these actions also have an element of *rodef*²⁸ in relation to the *gedolei Torah* and their students, who are extremely careful concerning any trace of theft and the like... and transgresses *dina d'malchusa dina* as well" (*Igros Moshe, Choshen Mishpat*, vol. II, 29). If one Torah institution is fraudulent in its dealings with the government, it reflects poorly on all *talmidei chachamim* and all *yeshivos*, giving the impression that they permit it and are involved in it.

Darkei Mishpat concludes that even if *dina d'malchusa dina* does not apply in *Eretz Yisrael*, the prohibition against stealing public funds certainly does (*ibid.*, note 26).

²⁷ A reference to *Yeshayahu* 61:8: "For I, Hashem, love justice, and hate theft in an *olah* sacrifice."

²⁸ *Rodef*, literally "pursuer," is a halachic term for one who is out to kill another person. In a broader sense, a *rodef* is one whose actions cause serious harm to another, in this case by portraying *talmidei chachamim* and the *yeshivos* as dishonest.

Falsifying Information

Rav Eliezer Yehudah Waldenberg²⁹ was asked if a doctor can falsify certain information when presenting the results of his medical research, in order to make a more favorable impression on potential employers. Rav Waldenberg responded that even if no patients will suffer from the deception, it is still forbidden. He cites the *Gemara* (*Chullin* 94a) and the Rambam (*Hilchos De'os* 5:6): “It is forbidden to deceive people, even non-Jews.” This is also the ruling in the *Tur* and the *Shulchan Aruch* (*Choshen Mishpat* 228:6). Rav Waldenberg adds that the prohibition obviously includes supplying false information or leaving out pertinent details in writing as well. In addition, doing so transgresses the Torah’s commandment, “Distance yourself from falsehood” (*Shmos* 23:7).

Practically speaking, Rav Waldenberg rules that concealing or falsifying information is forbidden, even if no one will be harmed (*Responsa Tzitz Eliezer*, Vol. 15, 12).

Based on this, it is certainly forbidden to conceal or falsify information in the case of tax returns, where other taxpayers will be the ones to make up the difference.

How much of a loss to the public does tax evasion actually involve?

A study in the United States estimated that in 2008, lost government revenue from unpaid taxes was in the range of \$450 to \$500 billion, and unreported income was approximately \$2 trillion. In other words, eighteen to nineteen percent of total reportable income is not properly reported to the IRS (Richard Cebula and Edgar Feige, “America’s Underground Economy: Measuring the Size, Growth and Determinants of Income Tax Evasion in the U.S.”).

In comparison to other regions, Europe has the largest black market, with the highest total of lost taxes as a result. Europe also has the highest tax rates in the world. In a study of thirty-six countries, Europeans averaged a tax rate that was thirty-nine percent of their GDP,³⁰ as compared to a world average of twenty-eight percent. The lowest rates were found among thirty-nine African countries, whose taxes represented approximately seventeen percent of their GDP.

In 2010, the latest year for which data was available, ten governments worldwide had each lost approximately \$100 billion in unpaid taxes (The Guardian, September 27, 2013, “Tax Evasion: How Much Does it Cost?”).

Why Pay Taxes?

²⁹ Rav Eliezer Yehudah Waldenberg (1915-2006), a *rav*, *dayan*, and *rosh yeshivah* in Jerusalem and the author of the twenty-two volume *Responsa Tzitz Eliezer*, was known for his expertise in halachic issues related to medicine.

³⁰ A country’s “Gross Domestic Product” (GDP) is the monetary value of all the finished goods and services produced within the country’s borders in a specific time period, usually calculated on an annual basis.

In the thirteenth century Rav Moshe of Coucy,³¹ author of the *Sefer Mitzvos Gadol* (*Semag*), spoke out openly to the Jewish community in Spain and beyond. He addressed the importance of scrupulous honesty in all dealings with fellow Jews and non-Jews alike, without exception. Our exile has extended for many long years, he said, and the time has come for our people to give up worldly frivolities and adhere to truth, the Al-mighty's imprint. He cites the words of the prophet Tzefaniah: "The remnant of Israel will do no injustice and will not speak falsehood, deceptive speech will not be found in their mouths" (*Tzefaniah* 13:3). Deceiving non-Jews is a desecration of Hashem's Name. When the Redemption comes, he writes, the non-Jewish nations should be able to acknowledge that we deserve to be redeemed because we are honest and truthful. If we instead deceive them, they will wonder why Hashem chose a lawless nation of thieves and swindlers (*Semag, Assin* 74, *Lavin* 2).

It appears that some messages bear repeating, even centuries later.

Throughout his life, Rav Shimon Schwab taught that *chillul Hashem* of any kind "lowers the awareness of the Divine presence in this world," with far-reaching ramifications. "If the perpetrator is a supposedly observant Jew – or worse, a so-called Torah scholar – then the offense is even greater."

"How can one who cheated his neighbor or defrauded the government... have the audacity to stand in front of the congregation and recite *Kaddish*, a prayer sanctifying G-d's Name in the world? There can be no whitewashing, no condoning, and no apologizing on behalf of the desecrators [of Hashem's Name].... And the more prominent a person is, the more scrupulous he must be in his business dealings to avoid even the slightest hint of a *chillul Hashem*.

"When [Rav Schwab] was asked to assist in efforts to secure the release of a 'religious' Jew who was incarcerated for fraud, he refused. 'Help him be released? He's a *rodeif* of *Klal Yisrael*. Because of him, *frumme Yidden* will suffer. Let him sit!'"

Rav Schwab's faultless honesty and integrity touched even an experienced IRS auditor. This was not an isolated incident, but part of this great Torah leader's understanding of the role of a Jew in our world: "The Jewish People... must be a *Mamleches Kohanim v'goy kadosh*, a nation of priests and a holy nation. A *Kohen*... is one who by word and example spreads the knowledge of the Almighty... Living in America, a *malchus shel chesed*, only strengthen[s] this obligation" (*The Ethical Imperative*, pp. 554-555).

³¹ Rav Moshe of Coucy, one of the later *Baalei Tosfos*, composed *Sefer Mitzvos Gadol* ("Semag"), a comprehensive work on the six hundred and thirteen commandments, in 1250. It was one of the first Hebrew books printed, in the late 1400's.