

ARI Z. ZIVOTOFKY

Tax Filing Season

– As Required by Halacha



This year, Americans living in Israel are aware of two tax filing dates within a period of two weeks, and each triggers a unique set of obligations. One is defined by Uncle Sam, for their cousins living in the USA¹ and the other is due to requirements of *halacha*. April 15 is when one submits a complete reckoning of the previous year's taxable income to the IRS and remits a certain percentage thereof. Mercifully, this reckoning is demanded only once a year. The *halacha* "tax reckoning" is even less frequent, occurring only twice every seven years, and this year, 5765, is one of those years. This 21 Nissan (April 30) is the final day to "file" one's *Vidduy Maaseir* ("declaration of tithes") and give away one's *terumos* and *ma'asros* (*biur Maaseir*), before they are overdue.²

The "Jewish tax" is comprised of several different components – actually gifts – with well-defined recipients for each. Portions of the agricultural produce from the Land of Israel are earmarked for the *Kohein* (*teruma* and *trumas Maaseir*), for the *Levi* (*Maaseir rishon*), and either for the poor (*Maaseir ani*), or to be set aside and consumed (by the owner) in the shadow of the *Beis Hamikdash*, within the confines of Jerusalem (*Maaseir sheini*).

THE TORAH'S SCHEDULE FOR FILING

The Torah established a seven-year cycle for all *terumos* and *ma'asros*.

RABBI ZIVOTOFKY LIVES IN BEIT SHEMESH, FROM WHERE HE WRITES WIDELY ON JEWISH TOPICS. HIS LAST APPEARANCE IN THESE PAGES WAS "HAND OR MACHINE: TWO ROADS TO FULFILLING THE MITZVA OF MATZA" (APR. '04).

During the first six years of the cycle, tithes and other gifts are taken from the produce and given to the *Kohein* and *Levi*, and during the harvest, certain sections of the field and produce are left for the poor (*pei'a*, *lekhet*, and *shikcha*). In years 1 and 2, and 4 and 5 of the 7-year cycle, an additional tithe is separated and is eaten by the farmer and his family in Jerusalem (*Maaseir sheini*), while in years 3 and 6 of that cycle, that portion is given to the poor (*Maaseir ani*). The seventh year is *Shemitta* (Sabbatical year), and all produce that grows is considered *hefker* (ownerless). It may be consumed by anybody and is exempt from tithing.

The Torah (*Devarim* 14, 28-29) requires that at the conclusion of each half-cycle, a reckoning be made, and the distribution of all accumulated *terumos* and *ma'asros* must be completed. The removal of all remaining *terumos* and *ma'asros* is called *biur Maaseir*, and, according to the Mishna (*Maaseir Sheini* 5:6), the final date for *biur* is *Erev* (the day before) the first day of Pesach (14 Nissan). The *Rambam* apparently had a different version of the text of the Mishna, and specifies (*Hilchos Maaseir Sheini* 11:7) *Erev* the last day of Pesach (20 Nissan) as the date for *biur Maaseir*. As an attempted resolution, Rabbi Yechiel Michel Tukachinsky, in a collection of *halachos* related to *Eretz Yisroel* published in the back of Rabbi Ganzfried's *Siddur Avodas Yisroel*, states that the *zeman biur* extends from *erev* the first day through *erev* the seventh day of Pesach.

¹ For Americans living abroad, April 15th is a day like any other day of the year. We have until June 15th – without requesting an extension – to file our U.S. taxes.

Following the *biur Maaseir*, *Vidduy Maaseir* is recited on the last day of Pesach of years 4 and 7. It is the beautifully formulated oral declaration found in *Devarim* 26, 12-15, which affirms that during the previous three years, one has executed properly all of the specified separations and distributions. This year (5765) is year 4 of the cycle, so this Pesach includes the reckoning day.

There are thus two separate mitzvos involved in this process of wrapping up the *Shemitta* half-cycle: *biur Maaseir* and *Vidduy Maaseir*. We should determine the applicability of each of these in today's circumstances. The *Rambam* (*Hilchos Maaseir Sheini* 11:4) rules that the mitzvah of *biur Maaseir* applies today, as well as in the time of the *Beis Hamikdash*, and, as the *Radvaz* notes, the *Raavad* does not debate this point.

THE CONTEMPORARY RULE OF GIFTS

Most consumers in Israel today buy fruits and vegetables from stores that display a *te'uda* (certification) attesting to the fact that a *mashgiach* has already taken care of separating all required *terumos* and *ma'asros*. But there are also many individuals who maintain a "*peruta chamura*" (a coin on which to transfer the sanctity of various tithes) to deal with untithed or questionably tithed produce. For them, this *Erev Pesach* will entail two

² We usually associate *vidduy* with confession of wrongdoing, yet here it is used to describe a declaration that everything was done according to *halacha*. For a beautiful explanation of how these are two sides of the same process of perfecting ourselves see: *Hada'as Ha'aretz* (5765), pp. 36-37.

biurim (ritual eliminations): *biur chameitz* and *biur Maaseir*. They have to ensure that all *chameitz* is out of their possession. And they have to ensure that all actual *teruma* and *Maaseir* produce is out of the house and properly disposed of, and that all redeemed *Maaseir* is transferred to one coin, which is then thrown into the Dead Sea, or otherwise totally destroyed.

According to the *Rambam* (*Hilchos Maaseir Sheini* 11:4), the mitzvah of *Vidduy Maaseir* applies whether or not there is a *Beis Hamikdash*, and thus it applies nowadays as well. The *Raavad* objects, and states that since the *vidduy* must be "*lifnei Hashem* - before G-d," it only applies in the period of the *Beis Hamikdash*. The *Rambam* (*ibid. halacha* 6) interprets "*lifnei Hashem*" to teach that ideally the *vidduy* should be said in the *Beis Hamikdash*, but even if it is said elsewhere, one has fulfilled his obligation. Thus, it can be recited even when the *Beis Hamikdash* does not exist.

The *Aderes*³ - who was appointed to succeed Rabbi Shmuel Salant as *Rav* of Yerushalayim in 1901 on the advice of Rabbi Chaim Ozer Grodzinski - writing in 1893, says that possibly because of our distance from *Eretz Yisroel*, we had never heard of the mitzvah of *Vidduy Maaseir* being observed. Yet, according to authoritative sources, it seems that it should be applicable, so he attempts to justify the apparent non-observance. He notes that the *Tur* omits any mention of it, and he offers five reasons why it should not be applicable today. For example, he suggests, as does the *Chayei Adam*, that because we are all *tamei* (ritually unclean), verse 14 from the declaration

³The *Aderes* (1842-1905) published a *sefer Acharis Hashanim* on *Vidduy Maaseir* in 5653 [1893], when he was still *Rav* in Ponevezh. Later that year, he became *Rav* in Mir, and in 1901, in *Yerushalayim*. It received *haskamos* from the *Netziv* (Rabbi Naftali Tzvi Yehudah Berlin), and Rabbi Yechiel Michal Halevi Epstein, author of the *Aruch Hashulchan*. The *Aderes* wrote it anonymously, and even included his own *haskama* and annotations to throw off those who might hope to guess the author. It was most recently reprinted in 5761. 5653 was a fourth year in the *Shemitta* cycle, as is this year.

("I did not consume it in a state of contamination") cannot be recited. However, the *Aderes* quickly backpedals. Noting that the *Shulchan Aruch, Rama, Shach, Gra*, and his ancestor, the *Levush*, all support its applicability, he proceeds to disprove each justification for non-observance that he had suggested. Thus, he demonstrates that when we perform the mitzvah of separating *teruma* and *maaser* while in a state of *tuma*, we are actually heeding the rabbis and fulfilling the Torah's intent for us, and are not thereby undermining the *vidduy*. In conclusion, he decides that the mitzvah is indeed obligatory at this time.

A SIGNIFICANT SETTING

An indication of the importance of this *vidduy* is its placement among the 613 mitzvos. Approaching the end of *Sefer Devarim*, the Torah focuses on global concepts. Examples often discussed are the final two commandments: the obligation upon each person to write a private *Sefer Torah* and the communal gathering of *Hakheil*. These two mitzvos are about the public and private learning and teaching of Torah. Immediately preceding these is the obligation to recite *Vidduy Maaseir*, in which one stands before G-d and declares that one has fulfilled his obligation to support community functionaries and the poor by proclaiming: "I have removed all the holy produce from my house, I have given it to the *Levi*, the stranger, the orphan, and the widow according to all the laws that You have commanded." Even today, when the separated produce is not distributed to the *Kohein* and *Levi*, the implicit lesson of the need to support the Torah educators and the downtrodden is among the fundamental messages of the Torah.

Rabbi Tukachinsky notes that there are many individuals who take the *Rambam's* position into account, and thus not only do *biur Maaseir*, but also recite the *vidduy*. It seems, however, that it is not universally accepted that one can or may recite it today. The Mishna (*Maaseir Sheini* 5:15) mentions that Yochanan

Kohein Gadol abolished the saying of *Vidduy Maaseir*. He did this because there was one sentence in the *vidduy* that could no longer be said. According to the Gemara (*Yevamos* 86b), when Ezra went from *Bavel* to *Eretz Yisroel*, the *Leviim* as a group failed to accompany him. As a collective punishment for their lack of appreciation that they could leave *Bavel* and emigrate to Israel, Ezra decreed that *Maaseir rishon* should henceforth be given to *Kohanim* instead of *Leviim*. Because of that change, the verse in the *vidduy* that states "And I have given to the *Levi*" could

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no longer be said, and Yochanan *Kohein Gadol* thus abolished the entire recitation. The *Rambam paskens* in accordance with this decree (*Hilchos Maaseir Sheini* 11:13) by stating that at a time when *Maaseir rishon* was given to a *Kohein* instead of a *Levi*, no *vidduy* was recited.

**TODAY'S PRACTICES:
MORE QUESTIONS**

It would seem that similar issues apply today. For example, how can one

proclaim that he has caused the *Kohein* to rejoice by giving him *teruma*, if all *Kohanim* and all *teruma* are *tamei*, and thus no *Kohein* may eat it? Or how can one declare that he has not separated the tithes while *tamei*, when all the separation today is done in a state of *tuma*? The *Mishna* (*Maaseir Sheini* 5:12) explicitly states that if one separates *maaser sheini* while *tamei*, he may no longer pronounce the *vidduy*.⁴ Because of these issues, many of those who want to honor the *Rambam's* opinion no longer recite the *vidduy qua vidduy*, but

rather as a section of Torah learning (*Shu"t Mishpat Kohein, Inyenei Eretz Yisroel*, 56). The *Chazon Ish* (*Demai* 2:6) was of the opinion that, based on the fact that the *Raavad* and *Sefer Hachinuch* held that there is no mitzvah of *vidduy* today, as well as the concern that the mitzvos of separating the various *terumos* and *ma'asros* may not have been fulfilled 100% correctly, that one may not recite the *vidduy* today.

Despite the many opinions that the *vidduy* is no longer applicable, suggestions to commemorate it have been made. Rabbi Eliyahu David Rabinowitz-Teomim, the *Aderes* suggested a public reading of the *Vidduy parsha*. He advised making it "lifnei Hashem" by reciting in a *beis midrash* or *shul* (or for those who can, at the *Kosel*). Gatherings should be made at these locations after *Mincha* on the last day of Pesach, and the *vidduy* recited publicly.

The gloom that is often associated with April 15 is in sharp contrast with the attitude required of the Jew when giving tithes. The declaration includes a statement that the *Maaser Sheini* was not eaten by a mourner, was not used for the needs of the dead, nor was it consumed by a *tamei* person. Giving it to the *Kohein*, *Levi*, and the poor was meant to be a joyous occasion. According to the *Mishna* (*Maaseir Sheini* 5:12), the declaration's proclamation that "I have done all that You commanded" means "I have rejoiced and made others to rejoice through it," by giving them their due with a positive countenance and with joy – a summing up of the attitude one should have in dealing with the blessings he has received.

**TITHES: EXPANDING
THE FIELD**

Most of the biblically mandated tithes did not apply to capital gains from Wall Street, only to agricultural produce in the Land of Israel. As Jews moved

⁴See, however, the commentaries on that *Mishna* as well as *Targum Yonasan* on the *passuk*.




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(or were removed) from farming in the Land of Israel and started making a living trading in commodities, the Jewish people focused on their obligation to tithe all income, giving 10% to the poor. Using *Vidduy Maaseir* as a guide, it became common practice to keep a special book in which to record all of one's earnings and subsequent dispersal to the needy. A number of such "Maaseir books" dating from the medieval period are still extant.

Another reminder, at least according to the *Gra*, of the mitzvos of *biur* and *vid-*

duy that we all hear, but may not appreciate, is the *Haftorah* for *Shabbos Hagadol*. The opinion of the *Gra* is that the special *Haftorah* of "Ve'arva" is recited only in those years when *Erev Pesach* is not on *Shabbos*, so it would not be recited this year. The *Aruch Hashulchan* (OC 430:5) observes that while some hold that "Ve'arva" is read only when *Erev Pesach* is on *Shabbos*, the custom in his community followed that of the *Gra*. What is the point behind this special *Haftorah* that leads to this difference of opinion? The key line is "and they

brought the *Maaseir* to the storehouse." Some held that only if *Erev Pesach* is not on *Shabbos* is this *Haftorah* read, since *Erev Pesach* was the time for *biur Maaseir*. The *Gra* held that the purpose of reading the *Shabbos Hagadol Haftorah* every year is as a reminder that it is time to do *biur Maaseir*. If *Erev Pesach* is on *Shabbos*, however, it is too late, and thus there is no longer a reason to read that special *Haftorah*.


A BLESSED RECKONING

Most people would be glad to submit their 1040 and never hear from the IRS again. By contrast, the Israeli farmer who has just joyously distributed all his remaining tithes and declared such to *Hashem*, then turns around and makes a request beseeching Him to "keep in touch." He concludes his confession by asking: "Look down from Your Heavenly Abode and bless Your nation Israel and the land You gave us, as You promised to our forefathers, a land flowing with milk and honey."

On what is this request for a *beracha* based? Solely on the fact that the requester has performed acts of *tzeddaka*. *Rashi* (*Bereishis* 18,16), based on a *Yerushalmi* (*Maaseir Sheini* 5:5), makes a very powerful observation about this request from *Hashem*. Every instance of the word *hashkafa* (gaze)⁵ found in the Torah is associated with destruction and curse. Yet, because of the power of *tzeddaka*, in the *Vidduy Maaseir* it is transformed into a language of blessing.

The Torah's agriculture-based laws have taken on a renewed life in our era with the ingathering of our dispersed nation back to its ancestral homeland. All of us living here are intensely aware of this every time we purchase produce. Many of us became further aware of it and became more connected to the mitzvos *ha'teluyos baAretz* (Land-bound mitzvos) by reading and learning about the inspiring *Vidduy Maaseir* that is relevant this Pesach. 10

⁵ See *Rashi* on *Shir Hashirim*, 6,9 for the etymology of the word.



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