



FROM THE VIRTUAL DESK OF THE OU VEBBE REBBE

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Purchasing Tax Liens

Question: May a Jew purchase a tax lien when the tax delinquent is Jewish, or is that taking *ribbit*?

Background: In about half of US states, tax authorities auction off tax liens (unpaid taxes create liens on taxpayers' property) to the public. After purchasing the tax lien (approximately for the amount due to the government), the buyer is entitled to ever-increasing charges. If, after a set time, the debt is unpaid (most redeem their property before then), the buyer can foreclose on the property and fully acquire it. As I understand from some research, the system works somewhat differently in different states/localities.

Answer: We have not found explicit discussion in classical *poskim* or contemporary halachic discussion of this exact case. To evaluate this possibly new question, we seek halachic parallels.

The closest parallel is loans that involve three parties – two Jewish and one not – which makes the existence of *ribbit* possible (see permutations in Bava Metzia 71b). The determining factor is generally whether

the obligation and payment (perhaps even partially) are between two Jews (interest is forbidden) or only between each Jew separately with the non-Jew (permitted). The Rashba (Shut I:764) speaks of a case where a Jew owes a non-Jew with accruing *ribbit* and the non-Jew transferred his rights to the debt to another Jew. This is parallel to our case, as the taxpayer owes the non-Jewish government, and the government transferred its rights to a Jewish tax lien purchaser. The Rashba rules that if the non-Jew receives the money from the first Jew, even if he then gives it to the second Jew, it is permitted. If the money goes directly between the two Jews, it is forbidden. The Rashba, and the Rama (Yoreh Deah 168:10), who codified this opinion, imply that the prohibited case is only a stringency because of the severity of *ribbit*.

The Taz (ad loc. 12) makes two qualifications. The potential problem of *ribbit* is only on that which is accrued after the transfer to the Jew; the second Jew may directly take that which was coming to the non-Jew prior to the transfer. (If the original debtor was not entitled to pay early, all the eventual *ribbit* is considered previously accrued (Chavot Da'at (Chiddushim) 168:20), but in our case, the taxpayer can pay at any time.) The Taz also says that the relative leniency of the Rashba/Rama was only regarding a non-Jew's partial/temporary transfer of rights to the second Jew, i.e., the non-Jew can pay off the second Jew

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and go back to demanding payment from the first Jew. In contrast, if the second Jew had obtained irrevocable rights to the loan, he has a full debtor/creditor relationship with the other Jew, so that taking additional *ribbit* is strictly forbidden. Although the Shach (Nekudot Hakesef ad loc.) takes issue on the Taz's first qualification and somewhat on the second, the consensus of *poskim* is like the Taz (see Gra ad loc.; Chavot Da'at ibid.; Torat Ribbit 24:1).

The purchase of the tax lien appears to be like the Taz's stringent case, making it forbidden to purchase a Jewish taxpayer's tax lien. Since auctions list details of the taxpayer and his property, it might be possible to pick someone who is highly unlikely to be Jewish; such "profiling" is, of course, an inexact science.

However, we do not want to take a clear stand on this matter for a few reasons. 1) The laws of *ribbit* are very complex, and we do not preclude a future or unknown-to-us responsum convincing us otherwise. 2) Obligations created by government decree can have special qualities, and sometimes may be able to obviate the prohibition of *ribbit* (see Shut Ramban 46). 3) We do not know certain potentially impactful factors (some likely differ from place to place), including the degree of finality of the purchase, and who receives payment from the taxpayer. In the meantime, we cannot permit purchasing tax liens of a Jew. We add that the system

appears to have some draconian provisions. This might make it appropriate to avoid on moral grounds.

We invite information/insight from our readership. ■

Having a dispute?



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