

If Something is Given as a Benefit to an Employee From a Seller, Who Owns That Item: The Employee or Employer?

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Question: Sometimes in the world of purchasing, sellers will give benefits to buyers as part of a purchase. For example, an employee works for a contractor who sends him to purchase some tiles. After he makes the purchase, the seller tells him that he has some extra tiles that he can have for free. Who gets those extra tiles? The employee or the employer?

Answer: It depends on the intention of the seller. If his intention is to give it to the contractor, then it belongs to him and the employee gets none of it. For example, if a seller is holding a “buy two get one free sale”, his intention clearly is to give the free one to the person who buys the other two, which would be the contractor. If, however, he specifically had intentions to give the bonus items to the employee – for example, if he doesn’t usually give away free tiles but since he had some that he didn’t need lying around he decided to give them to the worker – they would technically belong to the employee. Many Rishonim, however, hold that even in this case, the employee is obligated to share half of the gain with the employer. Their reasoning is that the benefit was directly generated by the employer’s purchase and he, therefore, has a right to half of it. This would only be true if the benefit was a result of the purchase. If the seller has tiles that he doesn’t need, which he would be willing to give away for free to anyone, then they are not connected to the sale and would belong solely to the employee. But if he wouldn’t give them to just anyone and only is giving them to the employee because of the sale, most Rishonim say that the contractor is entitled to half.