

Lost Ma'aser Money

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Question: Reuven had an envelope full of *ma'aser* money that he planned on disbursing to the *tzedakah* collectors in his shul. Somehow, he accidentally misplaced the money; is he responsible to replace it?

Answer: There is a rule that if a *gabbai tzedakah* was given money to distribute to poor people as he sees fit and he loses the money, there is no way for anyone to demand in *beis din* that he repay it. The reasoning for this is because the money is not owed to any specific poor person, so no one can act as the plaintiff in this case. Yet while the *gabbai* cannot be forced to repay the money, he should repay it *latzeis yedei shomayim*. However if the *gabbai* was given money with instructions to give it to a specific poor person, that poor person can take him to *beis din* and demand payment because that money was earmarked specifically for him.

Here though, it isn't *tzedakah* money that was entrusted to him, rather it is his own *ma'aser* money which is a different thing. The *Pischei Teshuva* speaks about a case where someone had *ma'aser* money set aside. He decided to use that money for his personal expenses (which is permitted as long as he replaces it) and sent merchandise to poor people instead.

Unfortunately, the merchandise got lost in transit. The *Pischei Teshuva* rules that in this case the man would have a *chiyuv latzeis yedei shomayim* to replace the lost money because it was his fault that the *ma'aser* got lost. Had he sent the original cash he had put aside and not the merchandise, it is likely the loss would not have occurred; therefore, he bears responsibility at least *latzeis yedai shamayim*.

It seems from the *Pischei Teshuva* that the only reason the person is *chayav* at all is because he did an action that led to the loss. If the money simply goes missing, it seems that one would not even be *chayav latzeis yedei shomayim*.

Rav Chaim Kanievsky, however, has a totally different outlook on this question. He says in the name of the Chasam Sofer that the *chiyuv* of *ma'aser* is to give money to *tzedakah*, and one does not fulfill the mitzvah until the money is transferred to the poor person. When a person puts money into an envelope with the intention that it be *ma'aser*, it is not considered to be given to *ma'aser* yet; therefore, he has not fulfilled the mitzvah and would still need to give *ma'aser*.

It appears from here that the answer to this question would be the subject of a *machlokes*. There is a *Divrei Malkiel* that says that one can be lenient when there is a *safek chiyuv ma'aser* which one may be able to rely on in such a case.