

Rav Baruch Fried

Question: An investor bought a piece of real estate for \$250,000 and subsequently sold it for \$350,000, netting him a profit of \$100,000. In order to avoid real estate taxes, he places the profits in a 1031-exchange, which basically means that it is designated to only be used for the purchase of another piece of real estate. Does he have to take *ma'aser* from this profit?

Answer: He definitely doesn't have to take out the money immediately and take off *ma'aser*. One can choose to separate *ma'aser* at any time that is convenient for him. If this investor wants to reinvest this money now and only worry about *ma'aser* later, he has the right to do that.

If he suffers a loss at some later date and wants to offset his *ma'aser* obligation on this profit from that loss, that would be subject to a disagreement amongst the Poskim. The Yosef Ometz rules that each business venture has to be looked at as a separate entity, and a loss from one venture cannot be deducted from the *ma'aser* calculations of another venture. The Nodah B'Yehuda disagrees and says that one can deduct losses from one business venture towards the gross profits of another, provided they both took place in the same year. The Chavas Yair rules similarly but says that it is dependent on each individual person's designated time for separating *ma'aser*, and need not necessarily be accounted for by the year.

So, according to the Yosef Ometz, one would not be able to deduct a loss from the second venture against the profits of this real estate deal that he owes *ma'aser* on. However, Rav Moshe Feinstein says that the practical ruling is in accordance with the Nodah B'Yehuda and Chavas Yair, which means that one can make one accounting of all his profits and losses over the course of a certain period of time and take *ma'aser* off of his total net profit for that period.

If an investor consistently places all the profits he makes from buying and selling real estate into 1031-exchanges and doesn't take out the money for years, it can be argued that he is in the midst of one long business deal that still has not concluded. If this is the case, he technically doesn't have to take *ma'aser* until the long deal is done, which could mean not until years later. But if a person only does this once and then concludes the deal, he would have to take off *ma'aser* at his usual designated time.