

Would a Money Manager be Liable For Causing a Client to Lose a Tax Credit?

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Question: There is a threshold of how much investment income a taxpayer can have and still be eligible for the Earned Income Credit. Reuven told his money manager to make sure he doesn't go over that threshold, as it would not be worthwhile to lose out on the credit. The money manager disobeyed his instructions and made him some extra money on an investment which caused him to lose the Earned Income Credit. Is he liable to pay him for that loss?

Answer: This is certainly not an act of damage, but it might be *garmi*.

The Poskim discuss a case called "*mevatel kiso shel chavero*", which is where someone caused his friend a loss of potential income. An example of this would be if someone locks up his friend's merchandise so that he cannot sell it on the market day, thereby causing him a loss of profit that he could have made. The Poskim rule that this is a case of *grama*, which means that he is exempt in *bais din* but liable in *dinei Shomayim*. It could be argued that this case is the same, as the money manager is causing the client to lose a profit that he otherwise could have made.

Moreover, one might claim that because an Earned Income Credit is given automatically by the IRS to any family that qualifies, the money is already his and is just waiting to be claimed. Thus, it is even more of a direct loss than *mevatel kiso shel chavero*, which is only a loss of potential *profit* that could potentially have been made. Accordingly, perhaps this would qualify as *garmi* and the money manager would even be liable in *bais din*.

However, it seems more accurate that causing the loss of the Earned Income Credit cannot be considered *garmi*. Even though it is given electronically and is done automatically, the individual still must file his taxes and be found eligible. Many things can happen over the course of the year that can cause him to not qualify. Accordingly, the money isn't simply waiting for him to claim it. Therefore, it cannot be considered *garmi* and remains in the same category as *mevatel kiso shel chavero*.

We would still have to consider the fact that the money manager is a

hired worker and such professionals are sometimes held culpable because part of their contract is that if they cause a loss to a client by not following instructions, they are liable for that loss. That is a different question that needs to be addressed but, in any case, he is not liable because of *garmi*.