



## Elections 2012 -A Jewish Perspective



### Introduction

A complex issue

Taxation is the most common way for governments through the ages to raise their funds. The government uses its power to require its citizens to give of their wealth to its coffers.

Taxation is about providing governments with the funds they need to spend. Once we know what things a government should provide, it will be much easier to decide what sort of taxation there should be and how much.

The first questions we should ask, then, are: what are the kinds of things on which it is legitimate for governments to spend; and who is empowered to decide exactly which and how many of those things the government should fund?

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## **Case Study 1:**

### **Oakwood, Ohio, and its revenue challenge**

#### **City anticipates \$2.6 million budget shortfall in 2013**

Neighborhood meetings to address financial challenge

By Lance Winkler

Over the next several months, there will be a series of neighborhood meetings, about forty in all, hosted by individual members of the Oakwood Budget Review Committee. These meetings are to address a possible \$2.6- to \$3-million annual budget shortfall due to the passage of House Bill 3 that will eliminate the estate tax as a source of revenue as of Jan. 1, 2013.

The city anticipates an annual \$2.6 million revenue shortfall averaged over the next ten years which accounts for about 20 percent of the money to pay for city services...

City Manager Norbert Klopsch presented five basic options to make up for the shortfall: 1) cut expenses 2) cut services 3) raise taxes 4) raise service fees, or 5) an incremental combination of all four.

Klopsch said there were two objectives for the upcoming meetings: 1) To educate our community to the reality of our financial situation; 2) To get feedback from the community as a whole to arrive at a proper decision in solving the problem.

Klopsch also announced there will be at least two Town Hall meetings slated to take place in late winter or early spring to

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more fully gauge community input. “Yes, we have a major financial challenge. However, I am confident that we as a community will find a solution that will allow us to maintain our comprehensive public services and community ambience,” said Klopsch.

Oakwood Register, Vol. 21 No. 3, January 18, 2012

### **Class discussion:**

**The class is now at one of those meetings. What would the class decide? What principles would they use to make their decisions?**

**Do you feel that this level of involvement is the norm for our national discussion of tax issues? Would it be beneficial if it were?**

## **A. Variety and Flexibility**

### **Text 1**

After looking all around, I do not see that the various communities have one way of setting taxes; this is because their customs in this case do not derive directly from Talmudic rulings. Were that the case, there would be only one way of taxing in all the congregations, as is the case with the other laws, in which the Talmud says, “The residents of the courtyard can compel each other... the residents of the city can compel each other...” Rather, when it comes to taxes, each congregation is

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considered to be a partnership of all its members, who can respond to the general demand of the king (for money) according to the ruling of the majority.

SHuT Rashba, 271

### **Text 2**

Tax matters are dependent neither on analogy from or on express Talmudic law, but on the custom of the land... since tax laws are part of the law of the land... and the product of many different customs.

SHuT Maharam Rotenberg, 106, 995

**Summary: Greatest authorities from all over the Jewish world agree that in Jewish law, there is no one-size-fits-all tax policy. Instead, tax law follows local custom.**

## **B. A Community Can Compel Payment**

### **Text 3**

We compel him [anyone living in the courtyard] to build a gatehouse and secure entrance to the courtyard... We compel him [anyone living in the city] to build a wall, doors and a security bar for the city.

Mishna, Baba Batra 1:4 (7b) with commentary by Rabbi Adin Steinsaltz in brackets

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### **Text 4**

Members of a city can compel each other to build the city's walls and bolted gates... to dig cisterns and water channels... and [to provide] wages for police and guardsmen.

Shulchan Aruch, Choshen Mishpat 163:1, 2

### **Text 5**

This is the law as well for all the needs of the city... compelling each other to contribute.

Rema on Choshen Mishpat 163:1

**Summary: a city is empowered to decide its own needs and to fund projects that will address them. It can compel those who disagree to comply with the will of the majority.**

## **C. Skin in the Game**

### **Text 6**

All the householders who pay taxes should be assembled and all should resolve to say their opinion [i.e., state their opinion and cast their vote for it] for the sake for heaven and then follow the majority. If the minority refuses, the majority has the power to compel them... One who abstains from giving his opinion is ignored and we follow the majority of those who speak.

Rema, Choshen Mishpat 163:1

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### **Class discussion:**

**To apply this principle to the case study of Oakwood, what are the advantages of having only taxpayers make decisions on these kinds of issues? What are the disadvantages?**

### **Text 7**

Every state should be so administered and so regulated by law that the magistrates cannot possibly make money... For the people do not take any great offense at being kept out of government—indeed, they are rather pleased than otherwise at having leisure for their private business—but what irritates them is to think their rulers are stealing public money; then they are doubly annoyed, for they lose both honor and profit...

In democracies the rich should be spared; not only should their property not be divided, but their incomes also, which in some states are taken from them imperceptibly, should be protected... In an oligarchy, on the other hand, great care should be taken of the poor, and lucrative offices should go to them; if any of the wealthy classes insult them, the offender should be punished more severely than if he had wronged one of his own class.

Aristotle, Politics 5:8

**Summary: In setting tax law, Jewish law gives decision-making power to those who will have to pay for those decisions. It cautions that fear of heaven is necessary – a religious commitment to seeing the welfare of each other member of the community as being as important as one’s own.**

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### **D. Additional Factors**

#### **Text 8**

Our Rabbis taught: In the case of a caravan traveling in the desert upon whom comes a troop bent on plunder, they calculate the ransom payment according to the wealth each carries, not per capita. If they hire a guide to lead them, they calculate according to the number of people as well [for going astray in the desert puts lives in danger], provided that they do not deviate from the usual custom of donkey drivers.

Bava Kama 116b

#### **Text 9**

They collect according to the proximity of houses to the wall: Rabbeinu Tam explains this to mean that the poor who live close to the wall should give more than the poor who live distant from it. Similarly, the wealthy who live close to the wall should give more than the wealthy who live distant from it. The wealthy who live distant from the wall should give more than the poor who live close to it, since the city collects according to wealth.

Tosafot, ad loc

#### **Class discussion:**

**How might the various criteria set out in the last few texts be applied to Oakwood's case?**

**Which of the various suggestions of the city manager would**

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**best accord with these rabbinic views that make benefit the main criterion?**

**How would the use of this criterion affect the way we would tax for schools? For parks? For upkeep of roads?**

**Would it make sense for Oakwood to put several levies on the ballot? Or should it raise money for its general fund?**

### **Text 10**

The aqueduct, the city walls and its towers and all the needs of Jerusalem came from the remainder of the treasury chamber.

Shekalim 4:2

### **Class discussion:**

**How do we find this principle at work in modern taxes? How might it apply in Oakwood's case?**

**Summary: Jewish law sees other factors as worthy of consideration in setting taxes. There are times when cost should be apportioned according to the benefit each derives. There are times when a uniform per capita contribution makes sense, as well.**

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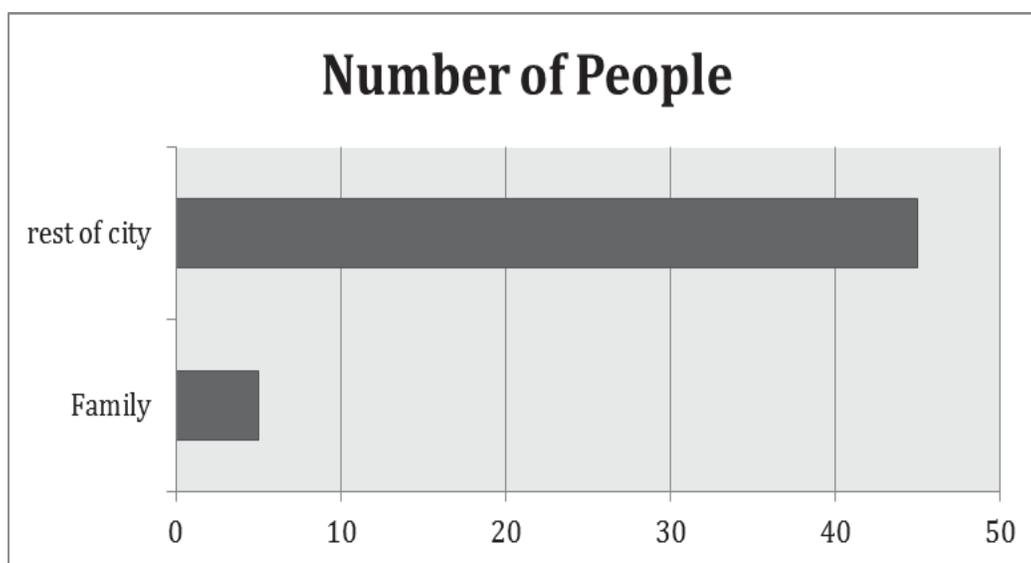
### E. Case Study – Seeking a Correct Balance

#### Case Study 2

##### Text 11

When I came to the city where I had been invited as rabbi, there was a dispute over the appointment of an executive secretary. The city had 50 taxpaying householders. Among them was a certain man, who, together with his two sons and his two sons-in-law, had great wealth.

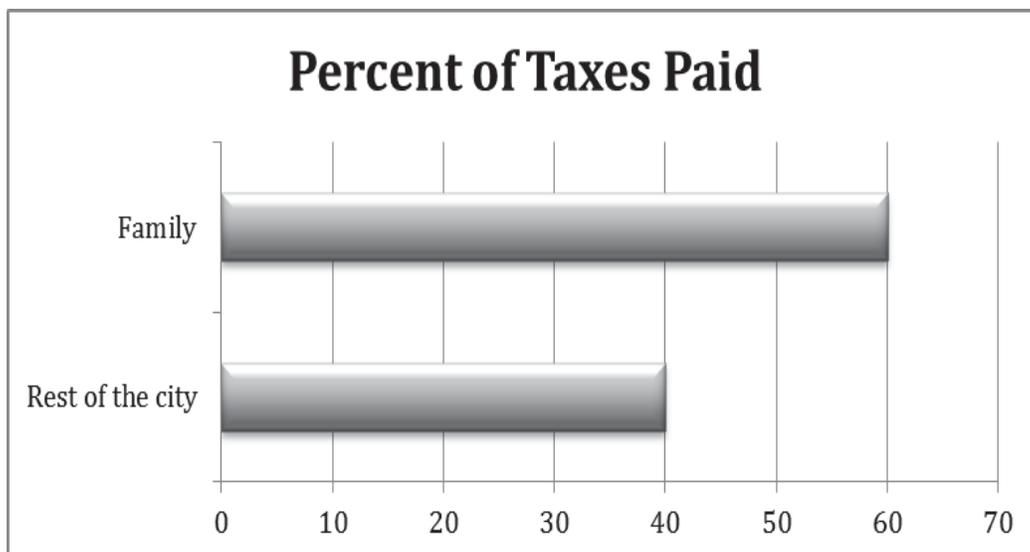
This family gave  $\frac{3}{5}$  of the taxes of the city; the rest of the fifty gave only the remaining  $\frac{2}{5}$ . For instance: if the congregation needed to pay out 50 gold pieces, these five householders contributed 30 gold pieces and the remaining 45 householders only contributed 20...



This particular man and his family did not want the candidate

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for secretary that the rest of the congregation wanted and so vetoed his appointment. The rest of the congregation brought their complaint before me.



[The family was operating under the assumption that since they paid a majority of the taxes (since being wealthy, they shouldered a much larger burden), they had a veto power over this appointment.]

### Class Question:

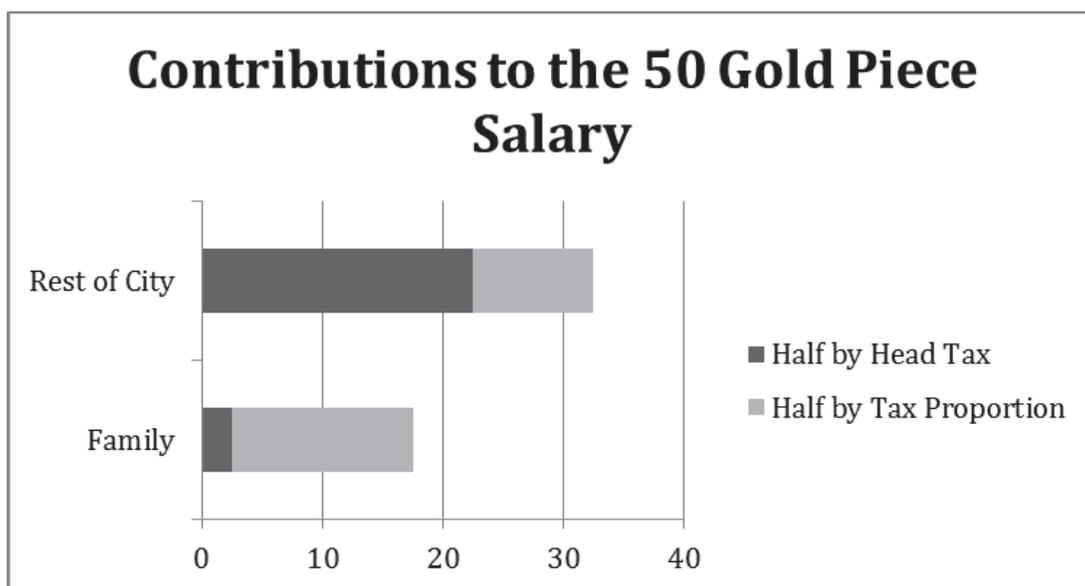
The rich man is giving the majority of the money in this community. Perhaps he may not dictate whom everyone should accept, but should he not at least have a veto?

Is it fair or just that he should be forced to pay the majority of the money for someone to whom he objects?

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### Text 12

What the founders ordained was well thought-out: one needs the majority of the people and the majority of the wealth, so that a poor majority cannot compel the minority of the wealthy, nor can the wealthy minority compel the majority who are poor. Rather, there must be an accord of the poor majority of the people with the wealthy minority.



[Let them] collect the salary of a rabbi, cantor or executive secretary in two parts, half to be paid by a head tax and half to be paid according to wealth. The salary of the secretary was to be 50 gold pieces. 25 would be paid by a head tax – each of the 45 householders would pay a half gold piece, and the rich man and his family, five people in all, would pay just two and a half gold pieces. For the remaining 25 gold pieces, the rich man and his family would pay  $\frac{3}{5}$ , or 15 gold pieces, and the rest would pay 10. Thus, since the rich man and his family would be paying a total of 17.5 gold pieces, he would not be paying a majority of the money, and thus he had no veto power.

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Rabbi Menachem Mendel ben Avraham Krochmal (1600-1661), ShuT Tsemach Tsedek 1 (partially paraphrased)

### **Question:**

**In what way did the Tsemach Tsedek address the problem that Aristotle had noted?**

**Summary: We see in an actual case one effective way in which the varying interests were balanced so that the wealthy were not subjected to envious confiscation nor were those on a lower economic level left to be dominated by the rich.**

## **F. Primacy of Custom**

### **Text 13**

In a place in which there is the custom or the desire to levy a single tax for all needs together, the method of taxation should be essentially according to wealth. For according to Torah law, all we collect for all these needs to be according to wealth [not on a per capita basis].

SHuT Tsits Eliezer, 22, p. 122

### **Text 14**

Scholars found the multitude of methods [derived from Tal-

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mudic law, “law of the non-Jewish kingdom, and from partnership law in particular] insufficient to overcome the wide array of tax law problems with which they and the communal leaders were confronted. Application of the private law rules of partnership offered no comprehensive basis for solving the myriad tax law problems that arose and belonged, by their very nature, to the field of public law – not only because partnership law offered no analogy for the overwhelming majority of tax law matters but also because a legal arrangement governing relationships between two or three partners was often unsuited to regulating the legal relationships between all the different units comprising the community. They found the way to settling most of the laws of taxation through using the authority vested in the public to make enactments and by means of the legal source of custom.

Menachem Elon, “Taxation” in Public and Administrative Law; Conflict of Laws, p. 667

## **Conclusion**

### **Text 15**

And they sent and called him, and Jeroboam and all the congregation of Israel came, and spoke to Rehoboam saying, "Your father made our yoke hard. Now you lighten your father's hard work and his heavy yoke which he placed upon us, and we shall serve you." And he said to them "Go away for three days, then return again to me." And the people departed.

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And King Rehoboam took counsel with the elders who had attended Solomon his father while he was yet alive saying: "What counsel do you give me to reply to this people?"

And they spoke to him saying, "If you will be a servant to this people today, and you will minister to them and you will respond to them and speak kind words to them, then they will be your servants for all times. But he disregarded the counsel of the elders who advised him, and he took counsel with the young men who had grown up with him and who were attending him.

And he said to them: "What do you advise that we reply to this people who have spoken to me saying, 'Lighten the burden which your father has placed upon us'?" And the young men that had grown up with him spoke to him saying: "So shall you say to this people who have spoken to you saying, 'Your father has made our yoke heavy, and you make it lighter for us,' thus shall you speak to them, My little finger is thicker than my father's loins. And now, where my father did burden you with a heavy yoke, I shall add to your yoke; my father flogged you with whips, but I will flog you with scorpions."

... And all of Israel saw that the king did not listen to them, and they replied to the king saying: "What share do we have in David? And no heritage in Jesse's son. To your homes, O Israel! Now see your house, David," and the Israelites went to their homes.

I Kings 12:6-11, 15

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### **Text 16**

The general principle is: Any law that a king decrees to be universally applicable, and not merely applying to one person, is not considered robbery. But whenever he takes from one person alone in a manner that does not conform to a known law, but rather seizes the property from the person arbitrarily, it is considered to be robbery.

Rambam, Hilchot Gezeila Va'aveida 5:14

### **Text 17**

All the parties concerned have to consider... the willingness of the citizens to pay the taxes levied. Ignoring this will lead to large-scale nonpayment of the taxes, limited only by the ability of the authorities to police and enforce their tax collections. Experience in many different countries and during vastly different periods of history has shown that this ability is limited whenever the taxpayer sees justification for the nonpayment of taxes.

Meir Tamari, *The Challenge of Wealth*, p. 230