

# Buying Gift Cards to Non-Kosher Restaurants

I would like to purchase holiday gifts for my employees and some of my clients. I learned that purchasing non-kosher food for them is prohibited, but what about gift cards? For example, is it permitted for me to purchase gift cards to non-kosher restaurants and give them away as holiday gifts?

The *mishnah* in Shevi'is (7:3) states that it is prohibited to do business – סחורה with non-kosher food. Shulchan Aruch<sup>1</sup> explains that the prohibition is limited to foods that are Biblically prohibited for consumption. The Bais Yosef<sup>2</sup>, quoting the Haghos Maimonee, maintains that just like it is prohibited to buy and sell non-kosher food, it is similarly prohibited to purchase non-kosher food and give it away as a gift. The Bais Yosef explains that the reasoning is that essentially, every gift is a sale. If one did not receive benefit from that person (or if one wants to receive benefit from that person in the future), why would you give them a gift? In your context this means that your desire to give gift cards to your employees and clients is to show your appreciation for what they have done and to generate further good will so that your employees will continue to work hard and your clients will continue to use your services. Based on this, it seems that giving a gift card to a non-kosher restaurant, violates the prohibition.

This matter, however, is far from simple. Shulchan Aruch<sup>3</sup> discusses someone who wishes to feed his employees during Pesach. His first ruling is that it is permitted to give money to a non-Jewish employee and tell him to use the money to purchase lunch. As long as one does not instruct him explicitly to purchase *chometz*, it is permitted even though one knows that he will use the money to purchase *chometz*<sup>4</sup>.

Shulchan Aruch's second case involves sending an employee to a restaurant to eat and instructing the employee to have the restaurant bill you after the meal. This case is subject to debate. The first opinion cited by Shulchan Aruch prohibits this and the reason is that since the restaurant owner is feeding your employee with the understanding that you will pay him for the meal, the restaurant owner is, essentially, your agent feeding your employee *chometz*<sup>5</sup>. However, the dissenting opinion permits this. Since you did not pay the restaurant owner in advance for the food, it is not your food that is given to your employee. You are merely paying a debt that was generated when the restaurant owner gave food to your employee without asking the employee to

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<sup>1</sup> Y.D. 117

<sup>2</sup> Y.D. 117

<sup>3</sup> O.C. 450:6. Shulchan Aruch there refers to an *eved* but for simplicity, we will discuss the *halacha* from the perspective of an employee.

<sup>4</sup> M.B. 450:15.

<sup>5</sup> M.B. 450:16.

# Buying Gift Cards to Non-Kosher Restaurants

pay for the meal<sup>6</sup>. Since you never purchased the food, you do not violate the prohibition against owning or benefitting from *chometz*<sup>7</sup>.

Shulchan Aruch then adds a limitation to this lenient opinion. He rules that if one sends money to the restaurant owner before the employee comes for lunch, it is prohibited. The reason this is prohibited is that since you already sent in the money, the restaurant owner is acting as your agent to feed your employees *chometz* and thus it is prohibited<sup>8</sup>.

Mishnah Berurah<sup>9</sup> then makes reference to Shulchan Aruch's parallel ruling about sending employees to a bar for drinks when they will drink *yayin nesech*<sup>10</sup>. Shulchan Aruch there rules that one may not give money to the bartender in advance of your employees coming to drink wine but then adds one essential qualification to this stringency. He writes that the restriction is in force only when one tells the bartender to hold onto the money until the employees drink their wine. In other words, you send in twenty \$5 bills and tell the bartender that each time an employee wants a glass of wine, he can place one of the \$5 bills from the counter into the cash register. If, on the other hand, you send the money to the bartender in advance and he may spend it immediately, even before your employees ever show up for their wine, it is permitted. This same qualification would apply to the employees on Pesach. If one sends the money to the restaurant owner with instructions that he may not use the money until your employees purchase lunch, the prohibition is violated. If, however, you send in the money and the restaurant owner could spend the money immediately, it is permitted.

If we apply these rulings to gift cards, the following *halachos* emerge. Purchasing the gift card in advance is the same as Shulchan Aruch's cases of sending money in advance to the restaurant owner or bartender. Since the restaurant owner and bartender can use that money immediately, it would seem that this is permitted. However, Shulchan Aruch's ruling that if the restaurant owner or bartender can spend the money immediately it is permitted is subject to debate. The Tur<sup>11</sup> quotes that Rashba that prepaying the restaurant is prohibited only when the restaurant owner must hold onto the money until your employees actually order lunch but if he can spend the money

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<sup>6</sup> The obligation to pay falls in the category of *arev*. Since you convinced the restaurant owner to give away food without taking payment from your employees, but simply because he trusts you, you become obligated to repay him for those meals.

<sup>7</sup> M.B. 450:17.

<sup>8</sup> M.B. 450:19.

<sup>9</sup> Ibid.

<sup>10</sup> Y.D. 132:4

<sup>11</sup> Y.D. 132

# Buying Gift Cards to Non-Kosher Restaurants

immediately, it is permitted. <sup>12</sup>Tur, however, disagrees with this ruling and writes that once you prepaid the bartender you acquire the wine and thus the bartender is your agent serving *yayin nesech* to your employees.

*Mishnah Berurah*<sup>13</sup> first cites Shulchan Aruch's lenient ruling in accordance with the Rashba but then notes that many authorities disagree with Shulchan Aruch's lenient ruling and agree with the Tur that even if the bartender can spend the money immediately, it is prohibited. Shaar HaTziyun<sup>14</sup> cites the Shach, Taz, Pri Chodosh and the Gra who all seem to follow the Tur's position and do not allow prepaying the bartender or restaurant owner, even if they can spend the money immediately.

Based on Mishnah Berurah's presentation, it would seem that purchasing gift cards to give to employees and clients is prohibited. The Poskim referenced by Mishnah Berurah maintain that prepaying is prohibited, even though the restaurant owner and bartender may spend the money immediately.

There is, however, a fundamental difference between the case of prepaying addressed by the Tur, Shach and Taz and prepaying the restaurant or bar owner when purchasing a gift card. The rationale behind the stringent ruling is that when one prepays, one effectively acquired some of the food that the restaurant owner or bartender had in their possession. Since the supply of food or drink that the employee will consume is already present in the store, prepaying effects a *kinyan kesef*. The Tur, for example, writes דכיון דכיון וביד נקנה לו היין – since you sent in the money in advance, – you immediately acquired the wine, ובשליחותו נתנו להם – and he then acts as your agent to give them your wine. In other words, Tur's rejection of the Rashba assumes that the money that is prepaid effects a *kinyan* on the food or beverage which is in the store at that time that will eventually be served to your employees. Since you make a *kinyan* on that food, it is prohibited.

That is not the case when one purchases a gift to a restaurant. Besides the fact that if the employee uses the card a few days later, the food that he will be served was not present in the restaurant when the gift card was purchased so there is no way that your prepayment was a *kinyan* on the food that he was served. But even more fundamentally,

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<sup>12</sup> Bais Yosef contends that the Tur is quick to dismiss Rashba's ruling because he only saw the Rashba's ruling in the Toras HaBayis HaKatzar, which just presents his final decision. Had the Tur read how the Rashba formulated his opinion and the proofs for that position as presented in the Toras HaBayis HaAruch, he would not have been so quick to dismiss the Rashba's ruling because it is, in fact, very compelling.

<sup>13</sup> M.B. 450:19

<sup>14</sup> 450:33

# Buying Gift Cards to Non-Kosher Restaurants

it is understood that purchasing a gift card to a restaurant is simply a purchase of a *shtar chov* that creates a *hischayous*, an obligation on the restaurant or bar to give \$xxx worth of product to the person who presents the gift card. In general, that is the *kinyan* of a gift card. The gift card represents a debt that is owed rather than the purchase of any merchandise. Since it is clear that the purchase of a gift card does not constitute a *kinyan* of any food or beverage and the money used to make the purchase can be used by the restaurant or bar immediately, it is permitted, according to all opinions to purchase gift cards to non-Kosher restaurants for clients and employees.