

Overview

Siman 38 Seif 8:

Those who write *tefillin* and *mezuzos* as well as those who sell them and those who sell them to merchants and all those who are involved in serving Hashem are exempt from wearing *tefillin* all day except for *shema* and *shemone esrei*. If they needed to do their work during the time of *shema* and *shemone esrei* they are exempt from *shema*, *shemone esrei* and *tefillin*. The rationale behind this *halacha* is that one who is involved in a *mitzvah* is exempt from another *mitzvah* if the other *mitzvah* requires effort to fulfill. If it is possible to fulfill both *mitzvos* at once without effort he should do them both.

- ❖ Merchants are exempt even though they profit from their business as long as their primary intent is to make *tefillin* available for those that need it but if their primary intent is the profit they are not exempt. (M.B. 24)
- ❖ If someone is in need for *tefillin* and cannot wait, the scribe or merchant is exempt even if he will not fulfill the *mitzvah*. (M.B. 26)
- ❖ The exemption applies only when one started working before the time for the *mitzvah* arrived, unless it is similar to the circumstance discussed in M.B. 26 and he will still have time to read *shema*. (M.B. 27)
- ❖ The exemption applies only while he is actively fulfilling a *mitzvah* but not when is inactively fulfilling the *mitzvah*. (M.B. 28)
- ❖ One is exempt from fulfilling the second *mitzvah* even if he will not have to forgo the first *mitzvah* and even if the second *mitzvah* is greater. (M.B. 29)

Siman 38 Seif 9:

Someone who is in pain and cannot focus properly is exempt from *tefillin* since it is prohibited for one to lose focus while wearing *tefillin*.

- ❖ Pain includes someone who is cold. (M.B. 30)
- ❖ Shulchan Aruch refers to one who cannot focus his attention but one who can is obligated to focus his mind. (M.B. 31)

Stories to Share

Focusing on the Tefillin

שי"ע סי' ל"ח, ט': "מפני שאסור להסיח דעתו מהם..."

On today's amud we find that it is forbidden for one's attention to wander from his tefillin while he wears them.

The Ohr Tzaddikim writes very strongly about this. "While wearing tefillin one must be careful not to forget them. He should not be like those who speak empty words, laugh and scoff while wearing tefillin. Such people do not heed that the Master's name is upon one who wears tefillin. Woe to them, and woe to their souls!"
אור צדיקים, סי' ח', סי"ו

The Misgeres Hashulchan adds. "Anyone who can protest this forbidden behavior—especially the rabbis in their lectures—must publicize the great punishment awaiting those who mock and are lightheaded while they wear their tefillin. They should explain that this causes all of our problems with the non-Jewish nations. The verse teaches that the reward for wearing tefillin according to the

Halacha Highlight

Are scribes and *tefillin* merchants exempt from wearing *tefillin*?

Shulchan Aruch Siman 38 Seif 8

כותבי תפלין ומזוזות... פטורים מהנחת תפלין כל היום זולת בשעת קריאת שמע ותפלה
Those who write *tefillin* and *mezuzos*... are exempt from donning *tefillin* the entire day except for *shema* and *shemone esrei*

Shulchan Aruch (סעי' ח') writes that scribes and *tefillin* merchants are exempt from wearing tefillin while they are involved in their profession. Mishnah Berurah (סי"ק כ"ד) in the name of Magen Avrohom writes that this exemption applies only when their primary intent is to make *tefillin* available for those who need it. If, however, their primary intent is to profit they are not considered to be engaged in the performance of a *mitzvah* and are not exempt from other *mitzvos*.

Biur Halacha (ד"ה הם ותגריהם וכו') writes that if a person has intent for the *mitzvah* and a profit equally - he is categorized as one who is engaged in the performance of a *mitzvah*. He proves this from a ruling of Elya Rabba (סי' תקפ"ט סק"ח) that one who blows the *shofar* on *Rosh HaShana* to learn how to blow the *shofar* but he also has intent to fulfill the *mitzvah* he is credited with having fulfilled the *mitzvah*. Some Poskim (עי' פסקי תשובות אות ח') hold that only those whose intent is exclusively focused on the *mitzvah* are categorized as those who are engaged in the performance of the *mitzvah* but if their intent is on the profit they do not fit into this category. Rav Moshe Sternbuch (טי"ו) writes that if the person would do the *mitzvah* even if he was not paid, the fact that he accepts payment does not exclude from this category.

Biur Halacha also asserts that when it comes to the scribe who is writing *tefillin* or *mezuzos* even if it is clear that were he not paid he would not write, nevertheless, he is categorized as one who is engaged in actively performing the *mitzvah*. His reasoning is that writing *tefillin* and *mezuzos* is considered part of the performance of the *mitzvah* —and while he is writing he definitely has in mind the *mitzvah*. Others, however, disagree and maintain that scribes nowadays do not fall into the category of those who are engaged in the fulfillment of a *mitzvah* since their intent in writing *tefillin* and *mezuzos* is to be paid for their work (עי' חיי משה בשם ערוה"ש סעי' י"א).

halachah is that it evokes awe in our enemies. It follows that violating the halachos while wearing tefillin spoils this and leaves us vulnerable to the non-Jews."

מסגרת השלחן על קיצר שי"ע, הלי תפילין

Rav Shamai Kehas Gross, shlita, adds, "It is the custom of chassidim and anshei ma'ase to refrain from speaking at all while wearing tefillin to ensure that they refrain from lightheaded behavior and joking while wearing tefillin. This was the custom in Belz. Rav Aharon of Belz would instruct the many bar mitzvah boys brought before him not to speak while wearing tefillin.

"The Bach brings this practice, explaining that refraining from speech while wearing tefillin is a *mitzvah min hamuvchar* (ב"ח בסי' מ"ד). Since in our times we only wear tefillin for a short time every day, isn't it only proper to fulfill it in the best manner possible?"

אורח כהלכה, ע' מ"ה-מ"ו