Tax, State, and Utopia

Tsilly Dagan
Avital Margalit
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Tsilly Dagan & Avital Margalit

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tdagan@mail.biu.ac.il; tali1807@gmail.com
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This Article examines the appropriate tax treatment of communities through the unique example of the Israeli kibbutz, a community that is traditionally governed by the maxim “from each according to his ability, to each according to his needs.” The case of the kibbutz highlights the tension between communities and the market in governing human interactions as well as the tension that exists between communities and the state in applying private schemes of redistribution.

The challenge communities pose for tax law is whether, and to what extent, the taxation regime should accommodate a community’s values and practices when they diverge from both market norms and society’s general scheme of redistribution. The Article tackles this complex challenge from two theoretical perspectives it develops: the commodificatory effects of taxing non-market interactions and the division of labor between state and communities in bearing social safety net responsibilities.
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Summary
Introduction

The relationship between individuals, communities, and the state is a central concern of both positive and normative legal analysis. This Article examines this relationship through the prism of tax law, with its considerable potential to support certain communities and undermine others. How should tax law treat communities and their interactions with their members? How should it treat interactions amongst community members? Should tax law allow for or perhaps even encourage private schemes of redistribution among friends or within certain communities? Or should social safety net issues and redistribution in general be a strictly state-level concern?

It is customary to think about income taxation as the classic arena for realizing the fundamental normative goals of efficiency and redistribution. Thus, traditional analysis of tax policy focuses on tax’s equity and efficiency. Yet in addition to pursuing these two goals, tax is also a powerful instrument that embodies a certain vision of individual taxpayers, of social interactions, and of communities, while at the same time shaping our identities, communities, and the society in which we live in often surprising ways.

Income tax law reflects—and simultaneously shapes—a particular conception of the self. It acknowledges some differences while ignoring others, thereby endorsing a certain notion of a taxpayer and undermining its alternatives. But the power of tax law is not merely expressive. Tax law obviously entails real-life consequences (e.g., disallowing commuting expenses on the assumption that people are supposed to live nearby their workplaces) and thus may affect taxpayers’ choices (to live far from their place of work, to work outside the home, or to stay at home). Assuming enough taxpayers change their choices, social meanings may change too, and social norms may be transformed. As a result, tax can affect the ways in which taxpayers function within their families, communities, and workplaces. Moreover, the makeup, size, and nature of the communities that taxpayers form and the social institutions that they construct may change as well.

This Article focuses on the significant role that income tax laws play in designing and shaping the interactions among individuals, in the formation of their communities, and in the construction of their social institutions. In particular, it argues that tax laws impact two substantial properties of social interaction: one is the balance between market and non-market norms among individuals and within communities; the other is tax’s effect on the division of labor between the state and communities in
bearing social safety net responsibilities.

The taxation of the Israeli *kibbutz* is a particularly fitting context for examining these issues and uniquely demonstrates our claims. The *kibbutz* is—or at least used to be—a commune. It is a community of people who hold and manage all property jointly and distribute its benefits equally, without any direct link between the work an individual performs or any other contribution she or he makes to communal life and the distributed benefits. At the same time, all the needs of the *kibbutz* members (such as food, housing, education, and health) are collectively provided for (either by other members or by collective means of production and consumption), constituting what is referred to as the “mutual guarantee” amongst all members. In this way, the *kibbutz* adheres to the maxim "from each according to his ability, to each according to his needs." As an intentional community, the *kibbutz* espouses ideals of equality, fraternity, and mutual assistance. Thus, what may have been interpreted in any other context as a series of quid-pro-quo barter transactions among the *kibbutz* members is a non-market interaction from the perspective of the *kibbutz* ideology.

The Israeli Income Tax Ordinance accorded special treatment to the traditional, commune-type *kibbutz*. The basic taxing mechanism recognized the unique and exceptional characteristics of the *kibbutz*; instead of treating it like any other corporation, the Ordinance avoided taxing the “transactions” among the *kibbutz* and its members. In fact, *kibbutz* members were not taxed at all, and the only entity taxed was the *kibbutz*, although its liability was determined according to its members’ tax rates. Thus, the *kibbutz* was essentially taxed as an upside-down flow-through entity in which the entity, rather than the members, is taxed.¹ This unique mechanism—we argue—reflects *kibbutz* ideology, acknowledges and facilitates the non-market nature of the interactions among the *kibbutz* members, and manifests a general tax law inclination to tax (only) market transactions and to avoid taxing non-market interactions.² In other words, we view the *kibbutz* as part of a spectrum of social interactions that follow non-market norms (e.g., family interactions and charitable organizations) that tax systems—we argue—tend to actively support. We argue, furthermore, that this special treatment of the *kibbutz* reflects state law’s deference to a community’s norms, acquiescing to the ideologies, structures, and internal


distributive schemes of kibbutzim and, thereby, empowering them and endorsing their self-governance.

Recent developments within many kibbutzim are context that exemplifies particularly well how (and when) law in general and tax law in particular can support or constrain communities. One development has been the transformation of existing kibbutzim into what is known as the “renewing kibbutz,” in a process whereby market norms have infiltrated daily life on the kibbutz, stressing the individual over the collective. These kibbutzim have undergone a privatization process, with a portion of the kibbutz property, including the income-producing industries and housing units, now privately held by the individual members. Labor arrangements have also changed. Kibbutz members are currently expected to support themselves, working inside or outside the kibbutz. A "differential wages" system of remuneration is now practiced, under which members’ wages are based on the actual economic value of their contribution to the kibbutz, as opposed to the traditional system of strict equality regardless of contribution. And yet, renewing kibbutzim still embrace the collective social safety net and an internal redistribution scheme through a community tax imposed on members who earn higher wages. The proceeds from these taxes pay for, among other things, the support of needy members.

This transformation of the kibbutzim offers a unique opportunity to consider the appropriate tax treatment of communities: an approach that reflects and respects the new boundaries between market norms and non-market values and reassesses to what extent the state should back the transformed form of solidarity within the community. The infiltration of market norms into kibbutz life has unequivocally transformed the kibbutzim; yet as a community, they retain a stronger-than-usual commitment to social responsibility for their members’ well-being. Tax policy regarding the renewing kibbutzim, then, we suggest, should be adjusted accordingly and attuned to these nuances.4

3 The Israeli tax authorities are aware of the changes that have taken place on the kibbutzim and are debating various proposed amendments to the Income Tax Ordinance in relation to the kibbutzim. See Report of the Frida Israeli Committee (THE KIBBUTZIM TAXATION MODEL EXAMINATION COMMITTEE REPORT, 2004 (2004). Although the issue has been discussed in various forums within the tax authority, the Ordinance has yet to be adjusted, and no specific blueprint proposal has been formulated for such an amendment.

4 Gliksberg, supra note 3, A-33.
The Article proceeds as follows: Part I presents a general theoretical framework for analyzing the appropriate tax scheme for a community shifting from a non-market regime to a market-oriented culture. The taxation of such a community involves two main theoretical concerns: first, the commodificatory effects of taxing non-market interactions; and second, the possible tensions between state law and community norms. Part II then presents the test case of the kibbutz. Section A sets the background to the historical evolution of the kibbutz, telling the story of the traditional kibbutz and its transformation in recent years. Section B proposes a general theoretical frame for taxing the kibbutz, while sections C and D demonstrate the applicability of our theory to the traditional kibbutz and the renewing kibbutz, respectively.

I. Conventional and Non-Conventional Goals of Tax Policy

Income tax is traditionally regarded as a vehicle for collecting and allocating the costs of government in an equitable and efficient manner. According to this canonical description, then, income tax is aimed at achieving the sometimes conflicting goals of maximizing social welfare and promoting distributive justice on a national level. Yet tax is also a powerful instrument that reflects a particular vision of individual taxpayers, social interactions, and communities, while at the same time shaping our identities, communities, and society in often surprising ways.

Consider identities first. Income tax law reflects—and simultaneously shapes—a certain conception of the self, as well as of taxpayers’ functions in various contexts. When, for example, income taxation acknowledges some differences among taxpayers but ignores others (e.g., a particular disability, childcare expenses, or support of dependent relatives), it is reinforcing a particular conception of a taxpayer and ignoring or, at times, even undermining alternative conceptions. In so doing, it draws on some image of the archetypical individual taxpayer while at the same time


6 See, e.g., Isaac William Martin et al., The Thunder of History: The Origins and Development of the New Fiscal Sociology, in THE NEW FISCAL SOCIOLOGY 1 (Isaac William Martin et al. eds., 2009).
participating in its construction.\textsuperscript{7} If, for example, we assume the archetypical taxpayer to be healthy, married, and childless, we exclude those who are disabled, single, or have dependents. These assumptions are not merely expressive: they have real-life consequences. Thus, for instance, in many countries, a taxpayer’s expenses for childcare, health, and commuting to work are considered personal expenses and, thus, non-deductible, whereas expenses for work-related travel or personal assistance are allowed as deductibles. Tax can, therefore, affect taxpayers’ real-life choices (to reside far from work, to work outside the home, or to stay at home), as well as indirectly affect their perceptions of themselves and others.

Second, income taxation plays a unique role in \textit{shaping social interactions}. To begin with, since tax affects individuals’ choices, once enough taxpayers have changed their choices, social meanings and social norms can change too. As a result, tax may affect the ways in which taxpayers function within their families, communities, and workplaces. Thus, for example, not taxing the work of a stay-at-home spouse while disallowing the deduction for hired help creates an incentive for single-earner families and thereby entrenches a certain convention regarding the family. Similarly, disallowing the expenses of disabled individuals or their employers to adapt their workplaces may discourage the inclusion of the disabled in society in general.

Tax can also affect the constitution, size, and nature of the communities that taxpayers form.\textsuperscript{8} Seemingly technical regulations (e.g., disallowing commuting expenses) could encourage communities to form around workplaces rather than, say, family connections; likewise, allowing the deduction of fees paid to religious associations could encourage communities to form around them, similarly, allowing the deduction of contributions to certain religious organizations reinforces their centrality in people’s lives.


\textsuperscript{8} Hence, for example, tax law can support and foster certain family-related arrangements (e.g., stay-at-home mothers) and favor them over others (two-earner families); it supports non-profit organizations, living nearby one’s workplace, and gift-giving. See, e.g., Lisa Philips; \textit{Taxing the Market Citizen: Fiscal Policy and Inequality in an Age of Privatization}, 63 LAW & CONTEMP. PROBS. 111 (2000); Tsilly Dagan, \textit{Ordinary People, Necessary Choices: A Comparative Study of Childcare Deductions}, 11 THEORETICAL INQUIRIES L. 588 (2010); Dagan, \textit{Commuting}, supra note Error! Bookmark not defined.; Dagan, \textit{Itemizing Personhood}, supra note 2.
Furthermore, income taxation operates under often implicit assumptions regarding the nature and meaning of the social institutions it involves. Some of these institutions are essential to individual autonomy: a person’s family, her residential community, the philanthropic institutions she contributes to, and, as we shall see below, the communities she belongs to—in our case the *kibbutz*. By endorsing these assumptions, tax law, whether explicitly or implicitly, contributes to the shaping of these institutions and social structures. Not only does it provide economic incentives (positive and negative) in relation to certain social ideas, actions, and behaviors, it also has an expressive function: it molds and reflects our understanding of which behaviors, communities, and interactions should be considered normative and, therefore, acceptable and which should not be (or be less) thus considered.

Particularly relevant is that the tax treatment of certain networks of support and voluntary schemes of redistribution could set the level and form of this redistribution and encourage certain social institutions while discouraging others. Take, for example, the tax treatment of interactions within families: tax often ignores services provided to family members and the financial support of young children, but includes in the tax base the financial support provided to other relatives (say, a disabled relative, whose support is disallowed as a deduction). Tax law does not traditionally impose a tax on babysitting services provided by a grandmother for her grandchildren; however, the services provided by a professional babysitter must be paid with after-tax dollars. Tax law often actively encourages charitable contributions, thereby supporting associations officially incorporated as non-profit organizations, but does not similarly foster aid provided by people to friends or neighbors in distress.

Because of its considerable impact on individuals’ identities, social interactions, and the communities they construct, an analysis of income taxation must consider, alongside tax’s traditional goals of efficiency and distributive justice, the less conventional tax policy considerations of identity and community. In what follows, we discuss in some detail these two considerations, exploring the ways in which

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9 For a discussion of the interaction between taxation and housing location, see Dagan, *Commuting*, supra note 7.

income tax influences the balance between market and non-market interactions and shapes and supports certain communities.

A. Commodification and Taxation

The market is indisputably one of society’s central institutions. It enables Pareto-improving exchanges of goods and services, as well as facilitating the realization of important human values such as autonomy and liberty. Critics of commodification note, however, that although the market "produces and distributes commodities with unsurpassed efficiency and in unsurpassed abundance,"\(^\text{11}\) when market norms apply in respect to non-market goods, they violate the way we properly value them.\(^\text{12}\)

For people to be able to wield full autonomy over their resources, the argument goes, they require, in addition to the free market, a market-free environment where their interactions are not valued using market tools.\(^\text{13}\) Such non-commodified relationships and attributes are vital to personhood. Determining who we are—even becoming who we are—is, to a large extent, the outcome of our non-market interactions, of how our family, friends, colleagues, and communities perceive our non-market activities and characteristics. Commodification can impact not only the meaning of things for individuals, but also the meaning of social interactions. If we believe that society is more than the aggregate of self-interested individuals serving their own interests, if “we conceive of community as crucially founded on human interdependence, as a network of processes and relations that expresses and creates value and significance not normatively reducible to an aggregate of self-contained individuals,”\(^\text{14}\) we may want to express this commitment by allowing certain interactions to take place outside the market.


\(^{12}\) See id. at 217-18: “When value is represented as the object of just one generic response, such as desire or pleasure, we don’t bother to consider whether the ways we produce and exchange goods adequately express the other ways we properly value them or one another. When rational choice is represented in terms of the maximization of value or preference satisfaction … we are tempted to think that the optimizing behavior of consumers in the marketplace sets the standards of rationality for all social life.”


\(^{14}\) Margaret Jane Radin, Contested Commodities: The Trouble with Trade in Sex, Children, Body Parts and Other Things 112 (1996).
Non-market behaviors and relationships—those that are based on care, altruism, or selflessness, for example—enrich society with collective goods that the market cannot provide. "[T]he act of giving is good in itself; it builds a sense of solidarity and communal competence." Venues free from market interactions are vital for the development of non-commodified interactions. The more commodified realms of personhood become, the less venues remain for non-commodified interaction. And the less space there is for non-commodified interactions, the greater the damage to people's personhood and the less benefit communities derive from the non-commodified interactions.

The central thrust of the classic commodification critique focuses on exchanges in personal attributes. The assertion is that the sale of certain attributes—those most constitutive of human identity—and, perhaps, also their subjection to market logic alter them and transform their inherent meaning. Paid-for companionship is different from going out with friends; paid-for care is not the same as being cared for by family or friends; selling a kidney is nothing like donating an organ; and sex for money is very different from intimate sex. Moreover, commercialization of the interactions between individuals is problematic: portraying these interactions as market transactions and as “impersonal, egoistic, exclusive, want-regarding, and oriented to ‘exit’ rather than ‘voice’” strips them of their possibly other-regarding nature. As Elizabeth Anderson argues, preserving arenas of non-market behavior and relationships based on care, altruism, and selflessness supplies society with certain essential collective goods.

At first glance, the link between tax and non-market activities seems weak. We tend to think of taxation as a tool for collecting money to fund government activities in the most efficient and just manner possible. Accordingly, the traditional goals of a “good tax” are, as noted, distributive justice (equity) and economic efficiency. Unlike efficiency and distributive justice, whose connection to tax law is obvious, advancing non-market aspects of our society—inter-personal, communal, family, or friendly relationships—seems extraneous to the goals of the tax system. Yet whether intentionally or not, taxation does shape non-market relationships. Moreover, taxation

15 Michael Walzer, Spheres of Justice 7 (1983). Moreover, the market (obviously) does not provide the right incentives for giving, and taxing this activity might lead to a less-than optimal supply of giving.

16 See Anderson, supra note 11, at 145.

17 Id.
is a tool that can support (or, inversely, harm) the development of the non-market sphere. Proper tax policy should, therefore, take this potential impact into account and reflect informed decisions about the desired direction of that impact.

Tax law, like many other legal institutions, does, in fact, distinguish between market and non-market interactions. Thus, a distinction is made between barter and gifts, between fringe benefits and improved working conditions, and between business deductions and personal expenses. The items on the one side of the divide (barter, fringe benefits, and business deductions) are taken into account for tax purposes, whereas those on the other side (gifts, improved working conditions, and personal expenses) are ignored. In addition, even under the most comprehensive plans for taxing income, certain activities and attributes remain outside the tax domain. Proposals to tax leisure activities, endowments, or even imputed income are presented not as practical suggestions but as more of a theoretical exercise or benchmark. The reluctance to tax such items could be (and has been) explained by measurement problems and administrative costs. But there is another—more fundamental—rationale for the exclusion of these items: a show of respect for the non-market sphere or even a direct effort to support it. It is because tax has a commodifying effect that taxation restricts, or at least attempts to restrict, itself to the market sphere. It targets income-producing attributes and activities and steers away from personal attributes, thereby preserving the boundaries of a market-free environment. The tax treatment of non-market interactions (the non-taxation of imputed income, gifts, and housework) facilitates non-commodification. One can conceive of these activities and attributes as lined up on a spectrum in accordance with their relation to people’s personhood, stretching from unrealized talents (endowments), to self-provided services (imputed income), to the provision of services within families and the mutual provision of goods and services among friends (gifts).

We argue that this spectrum can be extended to include non-commodified communities such as the kibbutz. It is our contention that the unique tax arrangement chosen by the Israeli legislature for the kibbutz (to be elaborated on below) should be explained as part of a more general framework that distinguishes between the market and non-market realms. The relations between the traditional kibbutz and its members and among members are a quintessential example of non-market interactions. The kibbutz ideology stands in stark contrast to the motivation underlying commercial

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18 For the commodifying effects of taxation, see Dagan, Itemizing Personhood, supra note 2.
transactions: namely, the desire to advance the narrow self-interest of the actor. As we shall see, the unique tax arrangement governing the kibbutz neatly captures this distinction. But the time has come to rethink this arrangement given the transformation that the kibbutzim have undergone, particularly in light of the decline of the non-market ideology and the ascent of more market-oriented arrangements.

B. Communities and Taxation

Communities are considered an important component of human flourishing. Traditional communities—which were based on personal acquaintanceship, shared beliefs, and feelings—were viewed as a source of solidarity, companionship, and sense of belonging. In modern times and with the emergence of urbanization, industrialization, increased mobility, and mass communication, traditional conceptions of community were shifted, leading some to declare (and mourn) the demise of community, while the more optimistic asserted its reinvention or even liberation, focusing on the changing character of communities and the interpersonal relations within them. In fact, the complexities of life could explain the need for and creation of new social networks alongside the more traditional ones. In the reality of heterogeneous Western societies, these communities serve as mediators between the state and individual.

Community has been a central concept in political and legal philosophies since their emergence. Although commonly invoked, there is no universal understanding of the meaning of community nor is there any consensus on its underlying rationale.


23 While the concept of community may be highly contested, Mason discerns some elements that may be included in the characterization of the nature of community: shared values, participation in a shared way of life, identification with the group, and mutual recognition. ANDREW MASON, COMMUNITY, SOLIDARITY AND BELONGING: LEVELS OF COMMUNITY AND THEIR NORMATIVE SIGNIFICANCE 19-25 (2000). Moreover, it seems that the recent debate between liberals and communitarians has contributed to the indeterminacy
Positions range from those who view community to be a strictly instrumental vehicle for promoting the welfare of the individual; to those who regard it to constitute a crucial part of individuals’ identities; to those who hold community to be an intrinsic good in itself. With the expansion of regulatory powers in modern Western states, the issue of the relationship between the state (which represents society at large) and sub-groups, minorities, and other private associations has become increasingly pressing.

The debate in the literature revolves particularly around the use of coercive powers by illiberal communities (whether communities can curtail the individual’s right to exit, free speech, or freedom of religion, for example) and whether (and how) the state should protect individuals’ autonomy and rights from infringement by their community. However, communities’ complex relations with the state and with their members cannot be reduced to a matter of the appropriate treatment of illiberal communities. Liberal communities play an important role in the current social reality and should, thus, be taken into consideration in formulating legal policy (tax policy included). Thus, for example, questions of communities’ governance, their collective rights vis-à-vis the state and other organizations, as well as the rights of individuals in such communities are all important aspects of any legal policy, not only in the context of borderline cases but also in indisputably legitimate contexts.

Tax policy raises particularly important issues regarding the interaction of individuals, states, and communities. First, tax laws provide incentives or disincentives for the formation and sustaining of certain communities—thus affecting the plurality of social interactions. Second, as mentioned, tax law shapes the internal interactions among members within a community. Third, tax law impacts the division of labor between the state and community with regard to the social safety net and redistribution in general.24

Tax law offers various incentives for the formation of communities as well as their frameworks of interaction with their members. It can either defer to a community’s internal governance when it touches on members’ economic interests, or

24 For a famous example of such a division of labor, see ROBERT NOZICK, ANARCHY, STATE AND UTOPIA 320 (1974): “In a free society people may contract into various restrictions which the government may not legitimately impose upon them. Though the framework is libertarian and laissez-faire, individual communities within it need not be, and perhaps no community within it will choose to be so.”
it can impose the generally applicable tax regime. Thus, for example, tax law might ignore intra-community transfers, treat them as donations (e.g., as when funds are collected by group members for a common purpose), or treat them as payment for certain goods. It might endorse intra-community support of the weak and needy or impose taxes on such support. It can encourage communities to provide an internal safety-net, thus leaving the door open to private schemes of redistribution (and defer to the community’s self-governance of its economic affairs); or treat such redistribution as unfair towards non-member citizens of the state; or—by taxing such private schemes of redistribution—may restrict redistribution solely to the state level.

Our key argument here is that irrespective of whether the law chooses to tax such interactions, it takes a position on these interactions: either encouraging or constraining. Thus, like any other state-imposed-mechanism, tax law should be mindful of the nuances of its interaction with communities and their members.

The tax treatment of community interaction, be it supportive or restrictive, is actually about allocating responsibilities and commitments among individuals, their communities, and the state. If the state allows a deduction for community-related payments, it supports such communities at the expense of the public fisc. It thus defers to the social functions served by such communities. If, however, the state disallows such expenses—treating them as purely private consumption—it is insisting upon its exclusivity over these social functions.

Moreover, determining where redistribution will take place is significant, not only because of its potential effects on people’s welfare, but also because the allocation of safety net and redistribution responsibilities is closely linked to and enhances people’s sense of belonging and solidarity. Thus, determining the appropriate level of redistribution of resources—whether the community redistributes wealth among its members and provides them with a significant social safety net or whether the state bears sole responsibility for both redistribution and social welfare throughout the state—is in many senses a decision about where the individual’s allegiance will lie. Stronger social support means stronger allegiance to the organization providing that support.

II. A Test Case: The Israeli Kibbutz

The traditional kibbutz community presents a special challenge for the tax system. Its unique combination of economic and communal relationships, along with
its distinctive commitment to the ideal of cooperation and mutual guarantee, was foreign to the traditional market-orientation of income taxation. Should tax law reflect these unique features of the kibbutz’s incorporation? Should it refrain from taxing the non-market interactions among kibbutz members and its private scheme of redistribution? Or perhaps, in the name of equality, should it instead ignore these aspects and treat the kibbutz like any other corporation?

A. The Traditional Kibbutz and the Renewing Kibbutz

The first kibbutz was established in Palestine in 1910.25 Currently, there are over 270 kibbutzim spread across Israel, and they are fully integrated into Israeli society. For a long period of time, the kibbutz was considered a great economic and social success. In contrast to the experiences of other communes (such as the religious communes in the U.S. in the nineteenth century26), the kibbutzim never sought to detach themselves from the surrounding society. On the contrary, from the very outset, they were a central part of the Jewish labor movement in Palestine and were supported financially by the Zionist movement. Kibbutz members played crucial roles in every sphere of life in the Jewish community in Palestine (known as the “Yishuv”) and, later on, in the state of Israel, including in the legislative and executive branches. The kibbutzim regarded themselves to be an integral part of society, as even its elite.

The traditional kibbutz is a special case of common property holding and communal way of life for people pursuing ideals of equality, liberty, fraternity, and mutual assistance. Its members hold and manage together all property (means of production, housing, and other consumer durables) and share its benefits equally with no direct link to their labor or any other contribution to communal life. Private property holding is generally prohibited, and all income, including the salaries received by members who work outside the kibbutz, goes into the common purse. At the same time, the kibbutz provides for all of the needs of its members (food, clothing, clothing,


26 See generally Yaakov Oved, TWO HUNDRED YEARS OF AMERICAN COMMUNES (1988); Carol Weisbrod, THE BOUNDARIES OF UTOPIA (1980).
housing, education, health, etc.) through a system of collective consumption, which constitutes what is known as the “mutual guarantee” for all members. Generally speaking, most traditional kibbutzim originally adhered to these basic principles of equality, common property holding, and mutual guarantee, with only some variances in how they were realized. The mutual obligations among the kibbutz members and between the members and the kibbutz were included formally in the articles of association under which the kibbutzim were registered as cooperative societies.27

Since its inception, the kibbutz, both as a social community and as an economic unit, has undergone a steady process of change. Yet it seems that the pace and nature of the transformation since the late 1980s have fundamentally differed from what preceded them, with current kibbutz life diverging significantly from the early forms of the institutional arrangements. In the mid-1980s, most kibbutzim experienced a critical economic crisis. The sudden and unexpected slump in the kibbutz economies was a serious blow to the pride and self-esteem of kibbutz members, as well as to the public standing of the kibbutzim in Israeli society at large. This crisis triggered waves of departures from the kibbutzim, as members’ sense of security from the collective mutual guarantee was shattered. Calls to reform the kibbutz gained impetus. Its various systems and arrangements were reexamined and retooled, and what is known as the "safety-net model" came to the forefront of kibbutz life. In line with this model, the majority of kibbutzim have modified, to various degrees, the communal aspects of the community’s life, limiting the scope of the mutual guarantee and requiring a new measure of personal responsibility to fill the void. In these kibbutzim, members must find a source of individual income, either inside or outside the kibbutz financial system. They receive a "general monetary budget" from the kibbutz, which allows them to set their own consumption levels based on personal preferences. There are kibbutzim in which high-cost areas of consumption that used to be supplied to members according to their needs, such as education and health, remain a component of this general budget. Another fundamental change was the introduction of a differential budget into the kibbutzim. Termed by members as “differential wages,” they are directly linked to members’ labor and other contributions to the kibbutz. In being contribution-based rather than need-based, the differential budget brought market economy precepts directly into the kibbutzim: members’ wages are now

27 The definition of the kibbutz in Israeli law also expressed this essence of its ideals. Cooperative Societies Ordinances (Types of Societies), 1995. K.T. 5722, § 2(5).
determined according to the market value of their labor.²⁸ And yet, even in this more market-oriented setting, certain important non-market community oriented features persist on the kibbutzim. One such key feature is the safety-net provided by the mutual guarantee fund, which ensures the livelihood of the elderly and other dependent kibbutz members and to which members are required to donate some portion of their earnings. These changes spread rapidly throughout the kibbutz movement, and as of 2012, there were only about fifty kibbutzim left that still conformed to the traditional model.²⁹

The state authorities were very aware of these transformations in the kibbutzim, but did not respond immediately or even quickly. The state continued to generally support and respect kibbutz autonomy, despite the realization that some kibbutz members would not fare well under these changes. Only in 2004 did the government appoint a public committee to investigate the changes in the kibbutzim. In 2005, it adopted the committee’s recommendations regarding the legal regulation of the kibbutz given the new reality³⁰ and enacted a series of new ordinances that provide for a new model of kibbutz life—“the renewing kibbutz”—which generally conforms to the safety-net model. According to the definition in the ordinance, a kibbutz becomes a renewing kibbutz when changes to its articles of association introduce at least one of the following: a system of differential wages (based on members’ contributions, positions, or time-based seniority); the authority for the kibbutz to privatize its housing system; and the authority for the kibbutz to privatize its means of production.³¹ A renewing kibbutz is obligated to create a mutual guarantee fund, and the law regulates the identity of its beneficiaries (which will usually consist of the elderly, disabled, and members with special needs), as well as how money is allocated through this fund. The regulations governing the renewing kibbutz empower the community to choose its preferred way of life (i.e., to move away from traditional

²⁸ The budget of members who work on the kibbutz is generally determined based on evaluations made by external professional consultants, who price the value of these members’ labor. A survey conducted in 2008 among kibbutzim that have adopted the differential pay system revealed an extremely wide divergence in the wages paid to members working in different jobs on the kibbutz.


kibbutz ideology), while at the same time constraining its powers by safeguarding the interests of its more vulnerable and less powerful members.

B. A Theoretical Model for Kibbutz Taxation: The Kibbutz, the Market, and the State

The traditional kibbutz community is obviously not strictly market-oriented, yet neither is it entirely non-market in nature. In stressing the non-commodified aspects of inter-personal relationships within the kibbutz, it offers an alternative to the market. In particular, the traditional kibbutz’s ban on private property and its commitment to mutual responsibility and the equal value of members’ labor are an antithesis to market ideology. Unlike the market, traditional kibbutz practices do not tie a member’s right to receive goods and services to her contribution to the common coffer. Instead, goods and services are distributed among the kibbutz members as per their needs and subject to the kibbutz’s financial capacities. Thus, the services kibbutz members provide to the community are not, almost by definition, remuneration for the services they receive from the community nor vice versa.

Yet the kibbutz was never merely an ideological and social organization and is no stranger to the material realm. From its inception, the kibbutz constituted the main economic framework through which the material needs of its members were met. It was an intentional community committed to the welfare of its individual members and expecting their best efforts in return. These were reciprocal duties, although no itemized or meticulous accounting was conducted. As such, the kibbutz as an entity cannot be neatly classified under any one of the recognized tax categories. On the one hand, the traditional kibbutz is clearly not a purely commercial body or engaged in strictly commercial relationships. Were this the case, it would be purchasing services from its members and selling services either to its members or to non-member customers. Under traditional tax laws, such a situation would yield two levels of taxation: the one, at the kibbutz level (taxing income from sale of services and allowing the deduction of their purchase costs) and, the other, at the level of the individuals (taxing income from the sale of their services). This commercial depiction of the traditional kibbutz is obviously inaccurate, as it does not actually purchase services from its members or sell services to them. The primary purpose of the relationship between the kibbutz and its members has not been profit-making but, rather, the collective provision of a decent quality of life to members. This quality of life refers not only to material aspects, but also to cooperative non-market community
life as a good in and of itself, as well as collective cultural and educational benefits.

Like the relationship between the kibbutz and its members, the interactions among the members themselves cannot be depicted as simple "give-and-take" transactions where the kibbutz functions as no more than a clearinghouse. The traditional kibbutz does not keep accounts on each individual’s level of consumption or (the market value of) their contributions. Therefore, it is hard to refer to these interactions as barters between members. A more fitting depiction would be a cooperative sharing of goods and services based on joint ownership of resources. This diverges considerably from the underlying basis of the taxation of other corporate entities, for it is not profit-making transactions that are at the focus of the interaction but a fundamentally different type of relationship.

And yet, although the kibbutz interactions do not fit squarely with any of the familiar mechanisms for taxing other incorporated entities, kibbutz members should not be completely exempt from paying income tax, as the kibbutz certainly provides them with a source of livelihood—by supplying their consumption needs as well as managing their collective savings. As with other taxpayers, kibbutz members should be taxed according to their actual level of well-being. There is no reason why collectively-provided consumption and savings should not be subject to tax. The fact that the kibbutz members chose to acquire these resources in a collective manner, through the kibbutz, does not mean that they should not be required to pay for their share of public services, as part of society.

Nonetheless, we argue that the non-market nature of the kibbutz relationship is significant for purposes of taxation. The fact that the kibbutz supplies its members with goods and services without direct remuneration is in itself valuable not only in the eyes of the kibbutz members but also in the eyes of society as a whole. Tax law, as discussed, tends to differentiate between market and non-market interactions. It targets the former as income-producing and excludes the latter in what we claim to be an intentional endeavor to facilitate non-market interaction alongside market interactions. The collective kibbutz relationship could certainly be viewed as one such not-for-profit environment. Like the family unit and charitable associations, the kibbutz, driven by its ideology, promotes (and produces) a unique value that the market is unable to produce: a community whose cooperation transcends the market structure.

Taxation of the kibbutz and its members requires the development of a nuanced mechanism that reflects this complexity and properly balances between taxing the material advantages enjoyed by the kibbutzim and their members and
respecting the unique non-market framework that the kibbutz facilitates. In other words, although kibbutz members should, undoubtedly, pay their fair share of taxes, the tax system should not disregard kibbutz ideology and treat its members as though motivated by sheer economic interest. Such a balanced arrangement seems well-suited in two ways: First, instead of imposing the prevailing market structure and logic on the kibbutz and its members, it preserves the market/non-market distinction without disrupting, and perhaps even encouraging, the realization of the kibbutz’s non-market ideology. Second, rather than subjecting the kibbutz to the state’s ideology, its general distributive scheme, and ways of life, this arrangement allows the kibbutz community a certain extent of autonomy to sustain its unique ideology, set its ways of life, and decide on the level of redistribution among its members.

As noted, the traditional kibbutz enjoys special tax treatment under Israeli tax law. This taxation scheme, discussed next in Section C, reflects, in our opinion, an interesting compromise between the market model, which generally characterizes tax law, and traditional kibbutz ideology. This compromise is not appropriate for the renewing kibbutz. However, as we will show in Section D, despite its shift towards the market on the market/non-market spectrum, the renewing kibbutz has retained important components of the non-market nature of the traditional kibbutz, which should not be sweepingly dismissed. Instead, a taxation mechanism should be implemented to reflect the renewing kibbutz’s complex and nuanced goals.

C. Taxing the Traditional Kibbutz

The traditional kibbutz has always been a special case in income taxation because of its ideology and the unique interaction between the kibbutz and its members and among the members, both of which, as detailed above, diverge significantly from market principles. The Israeli tax system, in recognizing this uniqueness, has traditionally taxed the kibbutz business activities (agriculture, industrial enterprises, and tourism) and refrained from taxing services provided by members to other members at either the kibbutz level or the individual member level. In fact, the members of traditional kibbutzim are not taxed at all as individuals, and only the kibbutz as an entity is subject to taxation.
Under this system, there are two stages to calculating the kibbutz-level tax. In the first stage, the income of the kibbutz as an independent entity is calculated. This includes income from all of the branches of the kibbutz’s business activities as well as income of members who work outside the kibbutz. In the second stage, taxable income of the kibbutz is attributed equally to the kibbutz members, and on this basis the (theoretical) tax liability for members’ allocated income is calculated. Credits, personal deductions, and other benefits are taken into account at the individual member level at this stage. Members do not actually bear this tax liability, but rather, the kibbutz pays the combined taxes calculated for its members. Thus, the kibbutz, as described, is treated as an upside-down flow-through entity for tax purposes, an arrangement that entails a number of unique features, as we will show.

1. The Traditional Kibbutz as a Unique Corporation

Although the kibbutz is a corporation, it is taxed different from other incorporated structures, such as companies and partnerships. As opposed to the two-stage taxation system applied to companies or the flow-through taxation of partnerships, kibbutzim are taxed as the sum of all their individual members.

Under the Israeli Income Tax Ordinance, the interactions between the kibbutz and its members are not subject to taxation. The members are not considered employees of the kibbutz, nor are they seen as deriving profits from it—unlike, say, shareholders in a company or partners in a partnership. The kibbutz’s provision of its members’ needs is not deemed income for the members (either as wages or as profit distributions), nor is it tax-deductible for the kibbutz. Instead, the incomes of both the kibbutz and its members (including the amounts budgeted for to supply the latter’s needs) are taxed

34 Id. § 2.1
35 Id. § 2.
jointly at the kibbutz level, as a single unit, much like a family rather than a company. Therefore, despite being a corporation, the kibbutz, unlike companies, is taxed along with its members at only one level, with the kibbutz paying income tax not only on the profits it made but also for "providing the needs" of its members. Yet in contrast to other flow-through entities (such as partnerships), the taxation is at corporate level, not the individual level. The applicable tax rates, however, are individual progressive rates rather than corporate rates. Furthermore, unlike companies, the kibbutz is eligible for individual member credits and exemptions (e.g., childcare and disability credits and exemptions).

2. Ignoring Transactions within the Kibbutz

The kibbutz is a cooperative association that operates collectively to produce income from productive market activities (such as agriculture and industry). As described, it also provides for the consumption needs of its members. Some of the


37 Kibbutzim sought to deduct from their profits the value of goods and services they provide to their members. The tax authorities, however, did not allow this deduction and instructed the kibbutzim to add the value of members’ private consumption to the kibbutz’s taxable income. Id. at 385, 433.

38 When calculating the collective income of its members, a kibbutz can also enjoy the personal credits and deductions that each member is eligible for under the Income Tax Ordinance based on her individual circumstances. After the kibbutz’s taxable income is attributed (solely for the purpose of estimating tax liability) equally among its members, each individual or family unit’s tax credits (including credits for dependents and credits provided for veterans) are allowed against the tax due to be paid by the kibbutz on their portion of the kibbutz income. The income tax due from each member is then added together and paid by the kibbutz (and not by the members). If the kibbutz cannot take full advantage of the credit due to any member for the tax applied to the portion of the income attributed to that member, the kibbutz is not allowed to "transfer" the residual unused credit to the tax attributed to another member. Credits that cannot be personally attributed to a specific member are attributed to the kibbutz as a whole and in effect divided amongst all members. With regard to tax-exempt incomes, the calculation of the kibbutz’s taxable income takes into account the exemptions allowed the kibbutz as a corporation that cannot be individually attributed, such as exemptions for various incomes related to financing and exemptions that the kibbutz members are personally eligible for. For example, the tax exemption given to a kibbutz member for disability is allowed against his or her proportion of the kibbutz income and cannot exceed his or her hypothetical tax liability.
means for providing these needs are purchased with income produced collectively by the *kibbutz*, and some are supplied internally by *kibbutz* members. Members either work to produce the collective income or provide internal services. Thus, for example, in the traditional *kibbutz*, some members work at the *kibbutz* plant in the manufacture of products to be sold on the market, while others work in the collective *kibbutz* kitchen, preparing and serving meals for all members. As explained, the Tax Ordinance does not treat and tax the interactions between the *kibbutz* and its members as “transactions”, but rather like a single economic unit. Accordingly, a member who works on the *kibbutz* itself (for example, in the collective kitchen) and is supplied with his basic needs by the *kibbutz* has traditionally not been seen as having earned income for his services, whereas in any other context, such an exchange could easily be viewed as the provision of a service in exchange for a benefit. The logic behind not taxing this interaction is straightforward from the perspective of the *kibbutz* ideology, which detaches the two activities: the member’s needs will be met even if he does not make a significant economic contribution to the *kibbutz* and even if his needs are considerable, so long as he remains a member of the *kibbutz* and contributes to the best of his ability. He is thus not providing services so as to be directly remunerated for them, nor are his needs being supplied in return for his labor.

The Tax Ordinance similarly ignores interactions in which *kibbutz* members on traditional *kibbutzim* provide services to other members without receiving direct compensation for those services. This array of collectively and mutually provided services could have been interpreted as a complex system of barter transactions in which each member collects income commensurate with the service she provides to the collective. However, Israeli tax law chose not to tax this interaction among the *kibbutz* members\(^39\) either at the individual member level or at the *kibbutz* level. Thus, when members provide one another with early child education, laundry services, kitchen services, gardening, maintenance, and the like, the consumption resulting from these services is not taxed at either the *kibbutz* level or the individual members’ level.

We contend that in refraining from treating the interactions among *kibbutz* members and between the *kibbutz* and its members as a series of barter transactions, Israeli tax law has taken the general tax law stance of not taxing non-market activities and relationships. Income tax codes generally do not tax the value of services that a taxpayer provides to herself or to her family members, whereas the value of services

\(^{39}\) AMNON REFAEL, DAVID EFRATI, INCOME TAX LAW 368 (1986).
purchased in market transactions (meals at restaurants, laundry and cleaning services, paid-for childcare) is included in the tax base. The services provided by kibbutz members to other members fall somewhere in the middle of the spectrum, between imputed income (the services one provides to oneself) and market transactions. On the one hand, they are services provided by others that the member-taxpayer consumes; on the other hand, the member-taxpayer does not pay for these services, either directly or indirectly. Accordingly, we maintain that had the Tax Ordinance taxed kibbutz members as though they are providing services for compensation, this treatment would, in fact, have reframed and misdefined their actions and relationships as market transactions rather than non-market interactions. The choice not to tax these reciprocal services, in contrast, reflects and reinforces their understanding as non-market interactions.

3. Proportional Attribution of Kibbutz Incomes among Members

As explained above, the kibbutz is taxed as the sum of all of its individual members. The kibbutz (and not its members) is, therefore, taxed at the corporate level, based on the implicit assumption that, for tax purposes, it is purely the representative of its members. The tax rate for the kibbutz is, therefore, the collective rate of its members (including progressive taxation and credits) and not the corporate tax rate.

Attributing to the kibbutz the tax benefits for which its individual members are eligible is grounded on the premise that those individuals share equal parts of the kibbutz income.\[^{40}\] Although this income is not actually distributed among the members, this is no mere legal fiction. The working assumption derives from and conforms to the kibbutz’s traditional egalitarian ideology, under which all members have equal rights. Thus, unlike other corporations, the kibbutz’s profits are not attributed to the members according to their "part" in the partnership, or the amount of capital or effort they invested, or even the benefits they actually derive from the incorporation. Rather, the attribution of income is based on the premise of complete equality in the kibbutz community.

D. Taxing the Renewing Kibbutz

\[^{40}\] Income Tax Circular, supra note 33, § 2.3.1.
As discussed, the way of life on many kibbutzim has been transforming significantly since the 1980s, especially in the context of the interaction between the kibbutz and its members and among the members. Recognizing these changes, the state has allowed kibbutzim to change their legal definition by adopting the renewing kibbutz form of incorporation. We will focus on two central changes to the kibbutz way of life that can clarify what changes should be made to tax policy to adapt it to the changing arrangements on the kibbutzim. The one important change is the adoption of a differential wages system, which links a member’s remuneration from the kibbutz to the economic contribution she makes to the kibbutz “common” coffer. The second development is the introduction of a community tax, whereby kibbutz members who earn relatively higher wages must contribute portions of their salary primarily to fund communal services and the kibbutz’s mutual aid obligations.

1. Differential Wages as an Expression of a Market Relationship

The taxation arrangement for the traditional kibbutz exemplifies tax law’s tendency to distinguish between market mechanisms and non-market interactions. The unique tax treatment of the traditional kibbutz and its members is appropriate given that the internal interactions on such kibbutzim generally fall under the non-market category.

The renewing kibbutz, with its transition to a differential wages system, seems to have significantly altered the relations on the kibbutz, shifting to a market orientation, and should be taxed accordingly. On traditional kibbutzim, the services members provide to one another are non-commodified, stemming from the non-market ideology of the community and the cooperative relations. In the renewing kibbutz, these relations have transformed significantly in nature, values, and goals. The taxation regime for the renewing kibbutz must take these changes into account. Indeed, in the most extreme version of the renewing kibbutz, members’ wages are actually determined by the market value of the services they provide. This practice represents a relationship based on market principles of give-and-take, where the reciprocal contribution is priced based on supply and demand. And when market principles govern the interactions on the kibbutz—i.e., when the market value of the services members provide to the kibbutz and/or other members is what determines the stipend they receive in exchange for those services—there is no reason to tax those members differently from anyone else who conducts a market transaction.

It is important to note, however, that differentiality in wages is not necessarily indicative of the commodification of the relationships among the kibbutz members and their pricing according to market norms. Differentiality can stem not only from a
desire to adapt kibbutz society to market norms, but also from a desire to adjust the kibbutz ideal of “from each according to his abilities, to each according to his needs” to the changing reality. It is possible, for example, that the differentiation in stipends is intended to incentivize members to work to the best of their abilities for the kibbutz community, even if members are not allowed to fully enjoy the fruits of their labor. Thus, a kibbutz member who performs her duties in a more "caring" way or with greater effort might receive different remuneration from other members performing similar tasks, even if the market would not reward such efforts or traits. A kibbutz might also wish to reward someone who is not rewarded by the external free market or whose market value outside the kibbutz is low, such as a teacher who puts no less time or energy into her job than the hi-tech employee who earns a high market salary. Differentiation could also be based on seniority or, as is common even on the traditional kibbutz, on special needs. Another source of divergence in members’ stipends that does not undermine the non-market nature of the community may be the greater needs of particular members. When the differentiability does stem primarily from a move towards commodified relations in the renewing kibbutz, there is no doubt that the market-priced income members receive in exchange for services they provide within the kibbutz, as well as, of course, for work outside the kibbutz, should be taxed. Yet at the same time, the renewing kibbutz is still not a solely profit-producing corporate entity, since the objective (or at least an important objective) of its incorporation is fundamentally social, communal, and ideological in nature. Therefore, if we seek to acknowledge or even support such communal features in this community, we must not subject the kibbutz and its members’ income to double taxation. In order to prevent this, there is a need to choose between the kibbutz level and member level in taxing the income. As noted above, under the existing arrangement for the traditional kibbutz, income tax is calculated at the kibbutz level alone, with the tax rate reflecting the combined tax liability of the members. This mechanism is based on the egalitarian premise that members have equal income levels. Since in the renewing kibbutz, there is differential distribution of income among members, the tax arrangement should reflect members’ actual income levels. Accordingly, calculating (and taxing) taxable income at the member, rather than kibbutz, level would be more consistent with economic realities and better promote distributive justice. And if members are to be taxed for the income they produce, the kibbutz must be allowed a deduction for those already-taxed sums so as to prevent double-taxation. The kibbutz’s income (as opposed to the members’ income) will, therefore, include all income from the joint activities and from the property that belongs to the kibbutz itself.

2. Community Tax
A common central feature of the renewing kibbutz is the community tax paid by members who earn relatively higher salaries than other members. The particulars of this community tax vary from kibbutz to kibbutz, but two general components have emerged as universal. First, the community tax is used to fund certain communal services, such as infrastructure maintenance, maintenance of common areas, and other municipality-like services. Second, a certain proportion of the community tax serves as the kibbutz members’ contribution to the mutual guarantee fund, through which payments are made to the elderly, disabled, and otherwise-dependent members. This part of the community tax is perhaps the most significant material expression of the members’ continued commitment to mutual support on the renewing kibbutzim as well. Through this commitment, the renewing kibbutz retains its distinctiveness from both other communities and other corporations. The notion of mutual support—like the principle of sharing in the traditional kibbutzim—is based on non-market principles. It is based not on a give-and-take mechanism (like an insurance mechanism, for example), but rather on members’ mutual commitment to one another, by virtue of their membership in the community, to preserve the communal framework and vouch for one another as members. Insofar as society values the non-market components persisting in the renewing kibbutz, these interactions should remain outside of the tax net, despite the kibbutzim’s more market-oriented elements.

The community tax can also be understood as a mechanism that decentralizes the distributive state scheme and allows distributive decisions to be made at non-state levels. All kibbutz communities, the renewing kibbutz included, are committed to taking care of special needs members, even when they do not contribute equally (or at all) to the community purse. In this way, the renewing kibbutz preserves the unique distributional scheme that differentiates it from the state-level distributional arrangement, with the former functioning as a private mechanism for distributing resources among kibbutz members. Redistribution of wealth is, of course, one of the central functions of the income tax system and usually reserved for the state: the state sets the criteria for eligibility; it determines how much tax should be paid and what

\[\text{[2014] TAX, STATE, AND UTOPIA 28}\]

\[41\text{ It should be noted that non-market relations are not unique to the kibbutz and there are other types of communities that can constitute non-market cooperative relations. For example,}\]

\[\text{religious communities can be construed as communities that operate on a non-market basis and make transfer payments at a certain level. This fact can justify their favorable tax treatment as well, but a discussion of such communities requires a detailed examination of the nature of the interaction within them.}\]
types of income and taxpayers are subject to the taxation. Yet the *kibbutz*, in both its traditional and renewing forms, in fact operates an internal redistributive system and sets internal criteria for eligibility and duties regarding the transfer payments under this scheme, as well as determining the amounts of the transfer payments and their goals.42

Tax law sometimes recognizes and even encourages groups of taxpayers to define for themselves their goals of distribution. The most illustrative example of this is the tax benefits accorded to charities, which are enjoyed at both the level of the charitable institution and the donor level. Unlike charitable institutions, however, whose beneficial work is not directed at certain identified individuals, the *kibbutz* community serves as a social security net that is limited exclusively to *kibbutz* members. Moreover, the *kibbutz* system determines not only who will receive the benefits (and based on what criteria), but also who will bear its costs and at what rate. Thus, allowing the *kibbutz* autonomy in shaping this distributional framework means recognizing not only the non-market nature of its framework but also its authority to independently decide which needs require collective support. Thus, for example, even if the state does not recognize physical disabilities or seniority as mandating tax benefits, the *kibbutz* could decide that either does.

The decision whether to grant this autonomy to the *kibbutz* and subsidize it via the tax system is not a trivial one. On the one hand, this would constitute a deferral to (and, thus, empowerment of) the *kibbutz* community; on the other hand, other taxpayers do not enjoy similar leeway in deciding to financially support, say, needy friends or relatives (although non-material support, such as caretaking, is not taxed).

42 *Kibbutz* members are included in the state transfer mechanisms, which are mainly operated by the National Insurance Institute. For the purposes of National Insurance, *kibbutz* members are regarded as employees and the *kibbutz* as an employer. National Insurance Law (Consolidated Version), 1995, S.H. 1522 (15.5.1995) 210, § 3. Although *kibbutz* members are not eligible for all types of public benefits, they do receive the state children’s allowance, old-age pension, and work injury compensation (though there is a unique system for calculating the benefits and components taken into account in determining eligibility and the insurance payments to be made by the *kibbutzim* for their members). However, under section 3(3) of the 1980 Assurance of Income Law, S.H 991 (1.12.1980) 30, *kibbutz* members are not eligible for the assurance of income allowance. Moreover, under section 158 of the National Insurance Law, *kibbutz* members are not eligible for unemployment insurance allowances. For signs of changes in this context regarding the renewing *kibbutz*, see N.I.C. 1508/07, Ferger Viniar v. Nat’l Ins. Inst., 9023 (2)2008. A comprehensive discussion of these issues is beyond the scope of this article.
At the core of this dilemma is the question of whether the considerations of the general distributional scheme outweigh the group’s autonomously determined scheme.

On a technical level, the dilemma at hand is whether the transfer payments to needy members should be exempt from tax on the recipient side as well as deductible for those who make the payments (in which case, the state would be supporting the private distributional scheme). Alternatively, should a deduction be disallowed for those who make the payments, which would mean that the state redistribution schemes are upheld?

Whereas community taxes that finance collective consumption (e.g., use of the local kibbutz swimming pool) clearly should not be deductible, less obvious is the case of community tax payments used to fund community activities that reinforce the communal spirit and commitment, such as the harvest holidays celebrations and commemorations in honor of kibbutz founders. This raises the issue of taxing non-market communal frameworks. If we hold that state tax law should promote non-profit communal associations (e.g., charitable institutions and social, cultural, or religious alliances/associations/communities funded by their members), then following the distinction between market and non-market interactions, payments in support of non-market communal activities should not be taxed as income. If, however, we hold that kibbutzim should not be treated any differently than, say, a community fitness center, then these payments should most certainly be considered income for the kibbutz (and any expenses entailed in operating the communal framework should be deductible).

**Summary: The Kibbutz, the Community, and the Challenge of an Appropriate Taxation Regime**

This Article has examined the complex interaction between tax law, communities, and individuals through the prism of the Israeli kibbutz. The unique relations on the kibbutz, both traditional and renewing, highlight the tension between the community, state, and market in governing human interactions and in implementing schemes of redistribution. Situated in a unique position between the market and non-market spheres, the case of the Israeli kibbutz, in both its forms, illustrates how tax law facilitates non-market alternatives. The kibbutz’s distinctive distributional scheme, the way intra-community relationships are treated for tax purposes, and the unique tax treatment of expenses intended to support the community offer insight into how tax
law impacts communities in general and private schemes of redistribution in particular.

The Israeli tax system devised a tax arrangement for the traditional *kibbutzim* that was suited to their ideology, social lifestyle, and associative patterns, on the one hand, and their status as an integral part of early Israeli society, on the other. In its analysis of the provisions of this arrangement, the Article proposed a general conceptual framework for understanding its rationale. We showed that the theoretical justification for the special tax treatment of the traditional *kibbutz* rests on the mainly non-market nature of the relationship between the *kibbutz* and its members and among the members themselves. We further explained how tax law has facilitated community-building and private schemes of redistribution in the degree of autonomy it has allowed the traditional *kibbutzim* in shaping their patterns of life in line with the values underlying their ideology.

As we explained, the renewing *kibbutz*, in its shift from traditional *kibbutz* ideology, has created another significant challenge for tax policymakers. The transition from the largely non-market interactions that characterized the traditional *kibbutz* to the more market-oriented relations on the renewing *kibbutz* requires a rethinking of taxation policy. The renewing *kibbutz* is in fact a hybrid of purely market mechanisms and purely non-market mechanisms and, as such, a new entity on the Israeli and, perhaps, also global tax landscape.

Throughout our analysis in this Article, we sought to translate the theoretical conception of tax law as a key social instrument into specific prescriptions that would allow members of communities (such as the traditional and renewing *kibbutzim*) to constitute their ways of life but without allowing them tax benefits in relation to other taxpayers. In this context, we focused on what we hold to be the primary areas in which tax law has the greatest potential to significantly impact the choices available to renewing *kibbutz* members: One such area is the choice between non-market versus market interactions, and we argued that tax policy should not provide market-oriented renewing *kibbutzim* any extra benefits vis-à-vis other market interactions. Another is the communal sphere of the *kibbutz*, in particular the internal social safety net (and its successor—the community tax) in renewing *kibbutz*; we maintained that tax policy should defer to community’s choices to provide such a safety net. The traditional *kibbutz* and renewing *kibbutz* represent, respectively, two points on the spectrum of social incorporation, which reflect different levels of commodification and different forms of communities. As such, they clarify how complex policy considerations (particularly those relating to identity and community) come into play in seemingly
technical tax mechanisms. They illustrate how rules governing the deduction of certain expenses (e.g., the community tax) or the classification of certain interactions (e.g., barter transactions as opposed to non-market interactions) and entity-level taxation (e.g., the taxation of the kibbutz as a unique incorporation) can work to support certain communities, facilitate unique forms of interaction amongst their members, and foster creative patterns of private schemes of redistribution.

As we have shown, the kibbutz is a unique social phenomenon. The tax laws applying to it should, accordingly, reflect its distinctiveness, as should Israeli tax law’s response to the changing reality with the transition of kibbutzim from the traditional model to the renewing model. Yet, the conceptual framework that we have proposed in this Article for contending with this reality is not unique to this context and can be applied to taxation arrangements currently governing, or that should govern, other communities as well, such as religious communities, mutual aid organizations, local co-operatives, and the Amish. Moreover, considerable insight can be gained from the tax treatment of the kibbutzim regarding the design of taxation arrangements that foster and, simultaneously, constitute the relationships between the individual, his or her community, and the state.