**64:06:01:38.  Relief agencies.** Application for exempt status must be made to the department. Exempt status shall be granted upon a showing that the applicant meets the requirements of SDCL 10-45-10. In determining the qualifications for exemption as a relief agency the following shall be considered, but will not be exclusive, in the final determination of the exemption status request:

 (1)  The relief agency is organized and conducted solely for the benefit of the general public and for relief of the public burden;

 (2)  A person who needs the services of the relief agency is not turned away because the person is not able to pay for services;

 (3)  The relief agency does not provide for gain or profit of any private member of the agency except in the form of a salary;

 (4)  Upon dissolution the assets of the agency are used for charitable purposes;

 (5)  The relief agency does not present or appear to present any obstacles of any character, such as founders' fees, mandatory assignment of income or property, or minimum fees, to those who need the benefits of the agency;

 (6)  The average cost of services of the relief agency exceeds the amount of fees actually collected;

 (7)  A major source of income of the relief agency results from gifts, bequests, or donations, not current charges;

 (8)  Allocation of facilities or services of the relief agency is not related in any way to ability to pay for such facilities or services; and

 (9)  The relief agency has an exemption granted pursuant to section 501(c)(3) of the Internal Revenue Code.

 Once an exempt status is granted, such a status must be renewed by the relief agency every five years with the filing of a new application, bylaws, articles of incorporation, constitution or articles of association.

 **Source:** SL 1975, ch 16, § 1; 2 SDR 40, effective December 8, 1975; 5 SDR 60, effective January 25, 1979; 13 SDR 129, 13 SDR 134, effective July 1, 1987; 21 SDR 219, effective July 1, 1995.

 **General Authority:** SDCL 10-45-47.1.

 **Law Implemented:** SDCL 10-45-10.

 **Declaratory Rulings:**

 The Salvation Army is a nonprofit relief agency not subject to sales tax. Secretary of Revenue Declaratory Ruling No. 75-1.

 A nonprofit corporation whose general purpose is to provide services to older persons in the community is not entitled to exempt status as a relief agency under SDCL 10-45-10 because its resources are not devoted exclusively to the relief of the poor, distressed, or underprivileged. Secretary of Revenue Declaratory Ruling 92-2, December 29, 1992.

 **Court Decisions:** A nonprofit corporation exempt from federal income tax, which provides free legal service to persons of low income and is funded by the federal government, qualifies as a relief agency under SDCL 10-45-10 and does not have to meet each factor enumerated in § 64:06:01:38. **East River Legal Services vs State, Department of Revenue**, 303 N.W. 2d 379 (March 18, 1981).

 A nonprofit corporation exempt from federal income taxes, which provides health and nutrition services for the elderly; education and development services for "headstart" and day care for children; weatherization, self-help gardens, and fuel assistance services for low income and elderly families; employment services for low income persons; and assistance and guidance to low income persons for community development, all without cost to recipients except for certain day care services, the activities of which are financed by the federal government, qualifies as a relief agency and is exempt from having to pay sales tax. **Western South Dakota Community Action Program, Inc. vs State, Department of Revenue**, 303 N.W. 2d 379 (March 18, 1981).