

This Tax Facts is designed to explain how sales and use tax applies to Relief Agencies. If this Tax Facts does not answer your specific question, please call the Department's toll-free Helpline at 1-800-TAX-9188 between 8:00 AM – 5:00 PM CST, Monday through Friday.

Information found in this document rescinds and replaces all previous written information on this subject. All readers and users of this publication are responsible for keeping informed about changes in tax laws and regulations by reading the Department of Revenue newsletters, press releases, Tax Facts, and other documents published by the Department of Revenue.

Relief Agency Definition and Criteria

A **relief agency** is any nonprofit charitable organization which devotes its resources exclusively to the relief of the poor, distressed or underprivileged, and has been recognized as an exempt organization under § 501(c) (3) of the Internal Revenue Code. SDCL 10-45-10. The relief agency must be providing the actual services. Agencies and foundations that raise funds and distribute the monies or products to other agencies that provide the relief are not exempt from sales tax.

Effective July 1, 2011, a relief agency must maintain a physical location in South Dakota to be considered for a sales tax exempt status.

A relief agency may apply for sales tax exempt status with the South Dakota Department of Revenue. If approved, the agency can purchase products, services and any product transferred electronically without sales tax. No sales or use tax is due on products or services the agency furnishes to others at no charge. However, the agency is responsible for collecting sales tax on any taxable products or services they sell such as sales of clothing or goods.

Pursuant to South Dakota administrative rule 64:06:01:38 the Department will review the following criteria to determine if an agency qualifies for the sales tax exemption.

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.

A relief agency may provide services or products such as:

- Advocates for children
- Care, treatment and rehabilitation services or facilities for people with addictions such as drug, alcohol or gambling
- Employment services
- Food banks
- Food, clothing, and household items
- Headstart
- Homeless shelters
- Legal services
- Medical services for underprivileged
- Shelters for domestic violence victims
- Toys for underprivileged children
- Transportation
- Weatherization and energy assistance

Applying for Exempt Status

An agency may apply for exempt status using the "Sales Tax Exempt Status Application" found online at www.state.sd.us/drr2/businessstax/forms/forms.htm. This form, along with the required documentation, may be submitted by Email, fax or mail.

Prior to applying the agency must have received the 501(c) (3) status from the IRS. The application will not be approved

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until the Department receives a copy of the IRS approval of the 501(c) (3) status.

The applicant must provide the following documentation for review by the Department:

- Bylaws
- Articles of Incorporation
- Constitution, Articles of Association
- IRS 501(c) (3) exemption approval and a copy of IRS Form 1023, Application for Exemption.
- Budget or financial statement

The Department requires a full explanation of services the agency provides and how it devotes its resources to the relief of the poor, distressed or underprivileged. If the agency charges for services, they must provide an explanation as to when charges are made and the fee schedule. A relief agency should not provide different levels of services based on the ability to pay.

A budget or financial statement will help provide documentation on how funds are obtained and spent. Most of the income sources for the relief agency should be from gifts, donations, or grants and not from fees charged for services or products.

If approved as a relief agency an exempt number is issued which contains the letters "RA". This number is active for five years and then subject to renewal. This number is used on exemption certificates furnished to suppliers to purchase products and services exempt from sales tax.

The exempt status of a relief agency must be renewed every five years. To complete this renewal, the agency must file a new application and submit the required documentation.

Documenting Exempt Purchases

When making purchases the Relief Agency must provide an exemption certificate complete with their exempt license number. The license number contains a "RA" to identify it as a relief agency. Payments for the purchase must be from the Relief Agency's funds. Purchases paid by individuals, even if accompanied by an exemption certificate, are subject to sales tax because the purchase was not made by the relief agency.

Gift certificates - purchases made with gift certificates purchased by a relief agency are subject to sales tax. The gift certificate is considered the same as cash and is not a direct payment by the relief agency.

Vouchers - purchases with relief agency vouchers that will be paid directly by relief agency funds are exempt from sales tax.

Washers and Dryers

A relief agency is exempt from the annual license fee and does not owe sales, use or gross receipts tax on receipts from the operation or ownership of coin operated washers and dryers placed and used in living accommodations provided by such organization to the poor, distressed or underprivileged.

Sales by Exempt Relief Agencies

Some agencies may sell products or services to help raise funds to pay for the services they provide to the poor, distressed, or underprivileged. Agencies that sell products or services will need a sales tax license. Agencies can apply for a tax license on line at www.state.sd.us/taxapp. The relief agency can purchase equipment, supplies and services, as well as products they will resell exempt from sales or use tax. Sales tax is due on receipts for taxable products and services sold.

Fundraisers -Receipts exempt from sales tax include: Receipts from religious, benevolent, fraternal, youth association or charitable activities, including any bingo or lottery conducted pursuant to § 22-25-25, where the entire amount of such receipts after deducting all costs directly related to the conduct of such activities is expended for religious, benevolent, fraternal, youth association or charitable purposes, when:

- The receipts are not a result of engaging in business for more than three consecutive days; or
- The receipts are not a result of engaging in business at a county fair for more than five consecutive days.
- There is no time restriction on bingo or lottery conducted pursuant to § 22-25-25.

All purchases of tangible personal property, products transferred electronically, or services for use in the activity are subject to sales or use tax at the time of purchase. This includes products to be sold.

Agencies that are otherwise exempt from sales tax, will owe sales tax on purchases they use in these activities.

This applies to raffles, bake sales, concessions, and other fundraisers that meet the above criteria.

Exception: Admissions to rodeos and rodeo-related events are always subject to sales tax.

Example:

A Local Club sells t-shirts at a 2-day community event. All the money raised from the t-shirt sales, minus expenses, will go toward a charitable cause that the Local Club supports. The Local Club will pay sales tax on the t-shirts when they are purchased. The Local Club will not be required to collect and remit sales tax on the t-shirts when they are sold.

Church

A church is not a relief agency and is not exempt from sales or use tax.

Talk to Us!

If you have a tax problem or question, call the South Dakota Department of Revenue toll-free at 1-800-829-9188. Visit us on the web at www.state.sd.us/drr, email us at bustax@state.sd.us or write us:

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