No. 1-10-2785

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FIFTH DIVISION
March 30, 2012

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GOLF LEASING, Inc., Plaintiff-Appellant, v. BRIAN A. HAMER, not individually but in his official capacity as Director of the Department of Revenue of the State of Illinois; and ALEXI GIANNOULIAS, not individually but in his official capacity as Treasurer of the State of Illinois, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County, No. 09 CH 13529 Honorable Sanjay Tailor, Judge Presiding.

JUSTICE J. GORDON delivered the judgment of the court.
Justices McBride and Justice Howse concurred in the judgment.

ORDER

Held: A taxpayer did not provide sufficient evidence to rebut the Illinois Department of Revenue's prima facie case of tax liability for use taxes, where the taxpayer did not provide documentary proof that its vehicles were used in interstate commerce, as required

to qualify for the rolling stock exemption.

¶ 1 Plaintiff Golf Leasing Inc. ("Golf"), a lessor of vehicles used as carriers for hire, appeals from a judgment of the circuit court affirming an administrative decision entered by the Director of Revenue of the State of Illinois ("Director"), which found that Golf was liable for unpaid use taxes on trucks and trailers purchased in 1999 and thereafter leased out as carriers for hire. These use taxes were imposed pursuant to section 105/3 of the Use Tax Act ("Act"), covering tangible property purchased from a retailer. 35 ILCS 105/3 (West 1999). Golf contends that the company was exempt from those use taxes pursuant to the "rolling stock exemption," which exempts from that tax vehicles used by interstate carriers for hire which transport property in interstate commerce, namely, property whose shipment terminates outside of Illinois, even if the vehicle in question transports that property only between points in Illinois, before it reaches it final destination outside of Illinois. 35 ILCS 105/3-60 (West 1999). Golf contends that it was improperly taxed on those vehicles because they were used to carry property that was ultimately shipped out of Illinois, and therefore, in interstate commerce. The Department responds that Golf failed to establish its right to the rolling stock exemption because it did not present sufficient proof that the shipments carried by those trucks, which were delivered to an entity in Illinois, were ever redistributed to out of state locations. For the reasons that follow, we agree with the Department.

¶ 2BACKGROUND

¶ 3 The parties do not dispute that Golf, an Illinois corporation in the business of leasing trucks to carriers for hire, purchased 52 trucks in 1999. Golf leased all 52 trucks to an intrastate

and interstate carrier for hire named JLG Trucking, Inc. ("JLG"), which is a separate corporation wholly owned by the same family that owns Golf. JLG used those trucks to haul scrap iron and demolition debris from demolition sites operated by JLG's customers, which include Walsh Construction ("Walsh") and Omega Demolition ("Omega"). JLG would largely transport its customers' scrap iron to a collection facility in Chicago owned by a company named General Iron Industries ("General Iron"), which purchases scrap iron and sells it to steel mills.

¶ 4 On February 14, 2006, the Department of Revenue of the State of Illinois ("Department") issued a Notice of Tax Liability ("NTL") to Golf for unpaid use taxes in the amount of $127,986, plus interest on those taxes in the amount of $106,227.52. The NTL was based on the Department's audit of Golf's books and records for the period between January 1999 and June, 2001, the audit period, and the department concluded that Golf owed use taxes in connection with the trucks purchased in 1999. It appears that the Department auditor calculated the amount of use taxed owed in connection with those trucks by examining the delivery records of a sample of 27 of the 52 trucks. In doing so, the auditor determined that 5 of those 27 trucks were exempt as "rolling stock" and 22 were not. He then determined that the purchase price of the 22 non-exempt trucks constituted 91% of the price paid for the 27 trucks whose records had been examined. Based on that percentage, the auditor then concluded that the taxable amount on the price of the 52 trucks in question was 91% of their total purchase price.

¶ 5 Golf filed a protest to the NTL, claiming, in pertinent part, that it was exempt from the use tax as applied to all 52 trucks purchased in the audit period, based on the rolling stock exemption because the property transported by JLG was ultimately shipped to steel mills outside

of Illinois. At the hearing, held before an administrative law judge ("ALJ"), Golf called Joseph Sansardo, a project manager at Walsh, who testified that "most of the trips" that JLG performed for Walsh during the period between January 1999 and June 2001 involved the transportation of scrap iron which was ultimately shipped out of state. He further explained that Walsh usually contracted with JLG to transport scrap iron and other demolition materials, which would be moved to steel mills both in and out of the State of Illinois.

¶ 6 Jerry Golf, the operations manager of JLG, testified that he had first hand knowledge that General Iron moved its materials out of Illinois because there had been prior occasions when JLG transported materials for General Iron to their final destination, which was out of state. Jerry explained that they had been transporting so much materials at the General Iron facility that at some time around the end of the audit period, JLG was hired directly by General Iron to transport materials for them. However, he acknowledged that JLG did not begin to transport materials directly for General Iron until the end of the audit period and could not estimate how many times JGL had transported materials out of state for General Iron. In addition, Jerry stated that some of the trucks that were the subject of the NTL had been purchased prior to August 14, 1999, which, as shall be explained below, was the date when the law governing the requirements for the rolling stock exemption changed.

¶ 7 Charles Gerage, the president of Omega, identified a letter signed by him, which stated that Omega instructed JLG to transport steel to "in and out of state distribution centers," and that in any event, all the scrap metal transported by JLG was ultimately transported out of state. The letter was admitted into evidence. Gerage then testified, consistently with his letter, that the "vast

majority" of the material that JLG dropped off at the General Iron facility in Chicago would then be distributed to steel mills located out of state. Gerage answered affirmatively when asked if the material went to "Hack Dump or Munster, Indiana," and later explained that General Iron ships that material to whichever steel mill facility ultimately buys the materials from General Iron.

¶ 8 Aside from Gerage's letter, described above, Golf introduced other documentary evidence, including "trip tickets," which are freight bills issued by JLG to its customers that documented trips made by the trucks in question and described both their origin and destination. Most of those tickets were issued to either Omega or Walsh for deliveries made to General Iron. However, the majority of the tickets introduced identified the delivery sites by the name of the recipient business, but contained no information with respect to the location of the delivery site. While a small number of trip tickets were issued by JLG to General Iron, which indicated trips made to mills in Indiana, Golf admits that the trucks engaged in those trips had not been purchased in the audit period and, therefore, were not part of this NTL. Also introduced were tables labeled as summaries of trip tickets, which apparently listed the number of trips that each truck made to General Iron labeled "General Iron Moves," as well as trips by those vehicles purportedly made out of state, labeled simply "Misc. out-of-state moves." That summary listed that data for 14 vehicles, six of which apparently engaged in "misc. out-of-state moves" in one of two "periods," the length of which is not described in the summaries. Further, Golf introduced another "summary" which indicated that of the 52 trucks acquired in the audit period, 34 were purchased before August 14, 1999.

¶ 9 Golf attempted to introduce a handwritten letter from an individual named Adam Labkon, who, according to Golf, is a representative of General Iron. The letter, which is addressed to "whom it may concern," states that "all the steel that is brought by your customers to this distribution center is eventually shipped to either Indiana, Iowa." However, that letter was excluded form evidence, on the Department's objection, because it was hearsay.

¶ 10 After Golf's case-in-chief, the Department called Michael Juricek, the auditor who had found Golf liable for unpaid use taxes and calculated its liability. He testified that, after examining the documentation that Golf provided him during the audit, he concluded that there was insufficient evidence that all of the vehicles in the audit went into the interstate commerce and, therefore, the company was not eligible for the rolling stock exemption. After considering JLG's trip sheets provided to him, Juricek concluded, as explained above, that 5 of the 27 trucks in his test sample qualified for the exemption. According to Juricek, there was insufficient evidence that the remaining 22 trucks in the sample "went 15 times in interstate commerce in a 12 month period," as is now the set minimum number of times a vehicle must be used in interstate commerce to qualify for the exemption.

¶ 11 Juricek confirmed that at the time of the audit, Golf had argued that the trucks qualified for the rolling stock exemption because General Iron shipped the product that it received from JLG out of state, and therefore, that material was in the continuous flow of interstate commerce. Juricek, however, disagreed, because General Iron was not itself an interstate carrier for hire. He stated:

¶ 12 "I did not feel that the items that were dropped off at General Iron – I felt that those were

– became a product of General Iron and then that they pretty much – as far as I understood it, they were pretty much free to send it wherever they wanted to send it."

¶ 13 Furthermore, Juricek acknowledged that prior to August 14, 1999, the law did not require that a vehicle carry property in interstate commerce at least 15 times in a 12 month period to qualify for the rolling stock exemption. He noted that prior to that date, the test for the exemption was that the transportation of such property had to be more than incidental, but did not define a set number of trips to qualify for the exemption. He stated, however, that at the time of the audit, he had been instructed to "go by" the 15 times in a 12 month period test in determining whether Golf's vehicles qualified for the rolling stock exemption, even for vehicles that were purchased before August 14, 1999.

¶ 14 In addition to Juricek's testimony, the Department introduced into evidence its NTL issued to Golf, and its audit correction, which contained the corrections to Golf's tax return, apparently filed by Golf before the audit. In its audit correction, the Department described the amount of taxes owed with relation to the trucks purchased during the audit period. Attached to those documents were the auditor's comments, which described the documents on which he based his determinations.

¶ 15 Following the hearing, the ALJ issued his recommendation for disposition, in which he affirmed the NTL. In doing so, he found that the Department established its *prima facie* case by introducing its audit correction and its NTL. The ALJ further found Golf did not rebut the Department's *prima facie* case because while Golf had shown that its lessee, JLG, had the necessary qualifications to be an interstate carrier for hire, it failed to establish that the rolling

stock was used in interstate commerce. According to the ALJ, that requirement cannot be established with mere testimony, but must be proven by documentary evidence, which Golf did not provide. The ALJ found that, even if testamentary proof was enough, the oral testimony introduced by Golf was insufficient to show that the trucks were used in interstate commerce because while the witnesses made general statements that the property transported to General Iron was later shipped out of state, they did not specifically testify to what happened to the property transported by a JLG truck in any particular trips, as required to claim the rolling stock exemption. While the documents introduced by Golf indicated that most of the trucks examined by the auditor made 15 or more trips to General Iron, there was no documentary evidence that showed that the materials transported to General Iron were subsequently transported outside of Illinois. The ALJ then concluded that Golf failed to establish its qualification for the rolling stock exemption both under the new standard, which requires 15 trips in interstate commerce, as well as under the prior standard, which did not set a minimum number of trips, but required that the trucks' use in interstate commerce be more than merely incidental. He stated:

> ¶ 16 "In light of the court's ruling in *National School Bus Service*, the taxpayer presumably is arguing that, irrespective of whether it met the 15 trips per 12 month test effective August 14, 1999, its vehicles purchased prior to August 14, 1999 were used in interstate commerce because their use in this manner was more than incidental. However, this argument fails for the same reason that the taxpayer's argument that it qualifies for exemption under the 15 trips per 12 month period test adopted in August 1999 fails. Both arguments fail because the taxpayer has not

> presented documentary evidence sufficient to rebut the Department's prima facie case that the debris it picked up and delivered in Illinois on occasions identified in the taxpayer's exhibits was subsequently reshipped outside of this state."

¶ 17 The Director accepted the ALJ's determination as his final administrative decision affirming the Department's NTL. Golf filed a timely complaint for administrative review at the circuit court. Upon review, the circuit court affirmed the Department's decision. However, in doing so, the circuit court found that the Director erred in concluding that Golf's qualification for the rolling stock exemption had to be proved by documentary evidence, but that error did not affect the disposition of that matter. The court then found that even taking into account the testimony introduced by Golf, it still failed to establish that it qualified for the exemption because the testimony that the scrap iron was transported from General Iron to mills outside of Illinois was "sparse, conclusory and undeveloped." In addition, the court noted that Golf's witnesses had "failed to provide any bases for their knowledge that the material was shipped out of state."

¶ 18ANALYSIS

¶ 19 On appeal, we first address Golf's contention that the Department's decision should be reversed because the ALJ erred in retroactively applying the new standard to determine its qualification to the rolling stock exemption, which, as mentioned above, set a minimum number of times that a vehicle must carry property in interstate commerce. According to Golf, this new provision was not applicable to the 34 trucks that were purchased before the new provision became effective on August 14, 1999.

¶ 20 The Department does not appear to challenge Golf's argument that the new standard

should not be applied retroactively to vehicles purchased before that provision became effective. Instead, the Department responds that it does not matter whether the new provision is retroactive because the ALJ did not apply only the new standard to the trucks that were purchased before August 14, 1999, but specifically stated that Golf had not proved that the trucks were used in interstate commerce even under the prior, less rigid standard. We agree.

¶ 21 As previously noted, before August 14, 1999, the Use Tax Act (hereinafter "Act") did not set a minimum number of times that a vehicle must transport property or persons in interstate commerce in order to qualify for the rolling stock exemption. Without indicating how frequently any interstate deliveries must occur, the statute provided only that "[t]he rolling stock exemption applies to rolling stock used by an interstate carrier for hire, even just between points in Illinois, if the rolling stock transports, for hire, persons whose journeys or property whose shipments originate or terminate outside of Illinois." 35 ILCS 105/3-60 (West 1999). On August 14, 1999, a new provision was added to the Act, which more precisely enumerates the required use in interstate commerce to qualify for the exemption. Under this new provision, "[u]se as rolling stock moving in interstate commerce means for motor vehicles *** when on 15 or more occasions in a 12 month period *** carried persons or property in interstate commerce ***." 35 ILCS 105/3-61 (West 1999).

¶ 22 However, even prior to August 14, 1999, taxpayers were required to show that its use of the rolling stock in interstate commerce was "more than incidental." See *National School Bus Service, Inc. v. Department of Revenue*, 302 Ill. App. 3d 820, 825-26 (1998). In that case, this court stated:

> ¶ 23 "The Act *** sets no explicit level of use required for exemption. But even if the Act expressly required use exclusively in intrastate commerce, the statute *** would mean that the Department could tax the use as long as any use in interstate commerce was merely incidental or secondary to use in intrastate commerce. Just as incidental use of property for noncharitable purposes does not destroy the exemption under the Retailers' Occupation Tax Act, an incidental use of rolling stock in interstate commerce will not destroy its taxability under the Use Tax Act." *National School Bus Service, Inc.*, 302 Ill. App. 3d at 826.

¶ 24 In this case, although the auditor who testified for the Department stated that he had been instructed to apply the newer, more strict standard, to all of the trucks, the ALJ found that Golf did not qualify for the exemption under either standard, citing to *National School Busing*, as quoted above. He then went on to state, as previously noted, that " this argument [that the use of the vehicles purchased before August 14, 1999 was more than incidental] fails for the same reason that the taxpayer's argument that it qualifies for exemption under the 15 trips per 12 month period test adopted in August 1999 fails. Both arguments fail because the taxpayer has not presented documentary evidence sufficient to rebut the Department's prima facie case that the debris it picked up and delivered in Illinois on occasions identified in the taxpayer's exhibits was subsequently reshipped outside of this state." That reason applies with equal force under either standard because, as shall be further explained below, documentary proof of interstate use is required to rebut the Department's prima facie case under both standards. Thus, the Department, in adopting the ALJ's recommendations, did not restrict its ruling to the new standard to

determine Golf's right to the rolling stock exemption. Consequently, we need not decide whether the new provision was retroactively applicable to vehicles purchased prior to August 14, 1999.

¶ 25 Golf next contends, however, that the circuit court and the Department erred in affirming the NTL because the testimony presented by Golf, that the scrap iron transported by JLG was later shipped out of state, was sufficient to establish that its trucks were used in interstate commerce with the requisite frequency to qualify for the rolling stock exemption under the new standard as well as the old. Golf argues that it was not required to provide documentary evidence that was in itself sufficient to establish its eligibility for the rolling stock exemption, and its eligibility was, therefore, properly established by testimony that the material which JLG transported to General Iron was later distributed to mills out of state to prove its exemption claim. Moreover, Golf also contends that in finding that it failed to rebut the Department's *prima facie* case, the ALJ ignored the documents presented by Golf. Thus, Golf maintains that it overcame the Department's *prima facie* case of liability, and the Department then failed to present any additional evidence to rebut Golf's proof that it was eligible for the exemption.

¶ 26 The Department responds that the Act and its regulations do, in fact, require Golf to prove its eligibility for the exemption with documentary evidence, such that any testimony introduced was not competent evidence. It further argues that, even if documentary proof were not required by statute, it would, at least in this case, be reasonable to require documentary assistance to rebut its *prima facie* case. Thus, the Department maintains that since the documents introduced by Golf do not purport to indicate that the scrap iron delivered to General Iron was ultimately shipped out of state, Golf did not introduce sufficient evidence to rebut the

Department's *prima facie* case of tax liability.

¶ 27 This court reviews the administrative agency's decision, and not that of the circuit court. *XL Disposal Corp. v. Zehnder*, 304 Ill. App. 3d 202, 207 (1999). An administrative agencys decision on questions of fact are not reversed unless they are against the manifest weight of the evidence. Id. However, questions of law are not entitled to the same deference, and this court reviews such questions *de novo*. Id. In this case, while the question of whether documentary evidence is required to establish Golf's qualification to the rolling stock exemption is reviewed *de novo*, the ultimate legal issue of whether Golf was, in fact, entitled to that exemption in light of the evidence presented at the hearing is a mixed question of law and fact, which we review under the clearly erroneous standard. See *JM Aviation, Inc. v. Department of Revenue*, 341 Ill. App. 3d 1, 9 (2003).

¶ 28 Golf, in support of its position, relies on *First National Leasing & Financial Corp. v. Zagel*, 80 Ill. App. 3d 358, 360 (1980), a brief opinion decided in 1980, where this court held that taxpayers claiming a rolling stock exemption to the use tax do not have to comply with the documentary requirements imposed on those who claim an exemption under the Retailers' Occupation Tax Act. In that case, the taxpayer introduced, in support of its exemption claim, its certificate of temporary authority and testimony that goods were occasionally carried across state lines by the taxpayer's vehicles. Id. at 359. The court held that taking all that evidence into account, it failed to show that the trucks were used in interstate commerce with sufficient frequency to be eligible for the exemption. Id.

¶ 29 The court noted however, that while the taxpayer failed to provide sufficient evidence to

support its exemption claim, it had not failed to comply with any record keeping requirements. Id. It noted that documentary evidence is required under section 7 of the Retailers Occupation Tax Act ("Occupation Act"), in support of any exemption claims in the course of an audit. Id. The court further acknowledged that that provision is incorporated by reference in the Act, but went on to say that such incorporation is only effective to the extent that it is consistent with the other provisions of the Use Tax Act. Id at 360 (citing 35 ILCS 120/7 (West 1999); 35 ILCS 105/12 (West 1999)). The court then went on to state that section 7 of the Occupation Act is in conflict with section 11 of the Use Tax Act, which, in pertinent part, directs every person in Illinois using property purchased at retail to keep "such records, ***as the Department shall require," and there was no such requirement imposed by the Department. Id. (citing 35 ILCS 105/11 (West 1999)). Therefore, the court concluded that the document requirements in support of exemptions under the Use Tax Act were controlled solely by section 11, and did not include the documentary requirements enumerated under section 7 of the Occupation Act. Thus, in reliance on this analysis in *Zagel*, Golf contends that the ALJ was incorrect in requiring documentary proof under the Act, which controls this case.

¶ 30 The Department, on the other hand, relies on *PPG Industries, Inc. v. Department of Revenue*, 328 Ill. App. 3d 16, 35-36 (2002) and *Sprague v. Johnson*, 195 Ill. App. 3d 798, 804 (1990), which are clear in requiring documentary evidence to rebut the Department's *prima facie* case of tax liability. We agree with the Department.

¶ 31 We first note that the analysis cited in *Zagel* is very brief and consists of *dictum*, since the court found that, regardless of whether documentary evidence was required to establish the

taxpayer's eligibility for the rolling stock exemption, the evidence presented in that case was insufficient in any event. See *Zagel*, 80 Ill. App. 3d at 359. Moreover, we disagree with the cursory analysis in *Zagel* which concluded that section 11 of the Use Tax Act is in conflict with section 7 of the Occupational Tax Act, since there is no language in section 11 that negates, or for that matter, even mentions, whether documentary evidence is required in order for a taxpayer to establish an exemption claim. Consequently, incorporation of section 7 of the Occupational Tax Act into section 11 of the Use Tax Act would now provide that requirement without conflicting with any provisions already contained in section 11. Furthermore, as reflected in *PPG Industries, Inc.*, 328 Ill. App. 3d 16 and *Sprague*, 195 Ill. App. 3d 798, even if that documentary requirement was not derived exclusively from statute, it has independent validity as a general evidentiary requirement without a statutory source.

¶ 32 In *PPG Industries, Inc.*, 328 Ill. App. 3d at 35-36, the court held that even in the absence of a statutory requirement, the Department may nevertheless require a taxpayer to produce documentary evidence to rebut the Department's *prima facie* showing of tax liability. It is well established that " '[a] corrected return as prepared by the Department is *** deemed *prima facie* correct,' " so as to establish any tax liability owed by the taxpayer. Id at 34 (quoting *Jefferson Ice Co. v. Johnson*, 139 Ill. App. 3d 626, 630 (1985). Furthermore, to overcome the Department's *prima facie* case, a taxpayer must present more than its testimony denying the accuracy of the assessments, but must present sufficient documentary support for its assertions." *PPG Industries, Inc.*, 328 Ill. App. 3d at 34 (quoting *Mel-Park Drugs, Inc v. Department of Revenue*, 218 Ill. App. 3d 203, 217 (1991). In that case, the taxpayer claimed that it did not owe

reversionary sales under the Illinois Income Tax Act because it had not made sales to states where it was not subject to sales tax. Id at 30. The court held that even if the record keeping requirements of the Occupation Act are not applicable to an exemption claim under the Illinois Income Tax Act, the taxpayer could not refute the Department's case without some documentation to corroborate its witness' testimony that no sales had been made to those states. Id. at 36. In doing so, the court noted that in a prior decision, this court had held that " 'while we do not hold the type of proof required to establish the petitioner's claim must rise to the level of that expected under the Retailers' Occupational Tax Act, we do not believe it unreasonable to expect her to do more than simply state that she supported her children [in support of her exemption claim under the Illinois Income Tax Act].' " Id. (quoting *Balla v. Department of Revenue*, 96 Ill. App. 3d 293, 296 (1981).

¶ 33 Furthermore, in *Sprague*, 195 Ill. App. 3d at 804, this court held that a trucking company failed to overcome the Department's *prima facie* case of liability for use taxes, where it did not provide documentary evidence, in the form of books and records, to support its claim to the rolling stock exemption. In that case, the taxpayer, a trucking service specializing in hauling rock, coal, sand and fertilizer, was assessed with unpaid use tax in connection with two trucks purchased in the audit period. Id. at 799-800. In support of its claim that those trucks were exempt from the use tax, the taxpayer presented only the testimony from its bookkeeper, who averred that those trucks were used to haul commodities to Indiana and to transport repairmen and tires to repair trailers. Id at 800-01. After the circuit court found that the taxpayer was exempt from use taxes because those trucks were used in interstate commerce, this court reversed

that decision, finding the taxpayer could not rebut the Department's prima facie case with only oral testimony that its vehicles traveled out of state. Id at 804. The court stated that "[t]his evidence is insufficient as a matter of law. As previously noted, documentary evidence of tax-exempt status is required to prevail against an assessment of tax deficiency by the Department." Id.

¶ 34 In this case, the Department established its *prima facie* case by introducing into evidence its corrected return which showed Golf's outstanding liability for unpaid use taxes. Thus, the burden shifted to Golf (*PPG Industries, Inc.*, 328 Ill. App. 3d at 35-36), and we now turn to the question of whether the documentary evidence provided by Golf sufficiently established that the material that JLG transported to General Iron was ultimately transported out of state.

¶ 35 Here, similarly to the taxpayer in *Sprague*, Golf has not produced sufficiently provided documentary support to its claim that the materials that JLG transported to General Iron was, at any time, shipped out of state. While most of the trip tickets in the record indicate trips made to deliver scrap iron at the General Iron facility, those tickets do not indicate whether the materials were to be subsequently shipped to another location. In fact, while a small number of tickets indicate that JLG itself transported material to other states for General Iron, those trips were not made with trucks that were part of this audit. While those tickets provide a tenuous indication that General Iron sometimes ships its scrap metal to out of state mills, it does not sufficiently establish that the trucks purchased in the audit period transported materials that were ultimately transported out of state.

¶ 36 Although Golf introduced Gerage's letter, which states that the scrap metal transported by

JLG was later shipped out of state, those statements were mere conclusions. That letter merely reiterated Gerage's own testimony at the hearing, and did not corroborate or provide the basis for his assertion. Further, while Golf's purported summaries of the trip tickets indicate that six of the vehicles in question occasionally engaged in "misc. out-of state moves," none of the actual trip tickets indicate that the trucks listed in the summaries made any trips out of state. Those summaries from Golf were not identified as documents prepared in the regular course of business, but appear to have been prepared in anticipation of litigation. Moreover, in any event, only six vehicles are listed as being involved in those undefined out of state moves, and no information was provided with regard to the length of the period to which that data applied. Further, the list labeled "misc. out-of-state moves" is separate from the one labeled "General Iron moves," which appears to indicate that those out-of-state moves are unrelated to the trips made to General Iron, after which the scrap iron was allegedly shipped out of state. However, Golf did not claim that its trucks which were subject to this NTL directly delivered their inventory of salvage to out of state sources, but its claim to the rolling stock exemption was hinged entirely on its contention that the materials delivered to General Iron was later shipped to out of state mills.

¶ 37 Even if we were to put aside the statutory requirement for documentary proof to rebut the Department's prima facie case, the documentary evidence in this case would nonetheless be insufficient. See *Three Angels Broad. Network v. Department of Revenue*, 381 Ill. App. 3d, 679, 697 (2008) (the evidence provided by a taxpayer in support of its exemption claim is not sufficient to establish its right to the exemption if it merely states conclusions, but do not contain the specific facts upon which those conclusions were based); accord. *Rogy's New Generation*,

Inc. v. Department of Revenue, 318 Ill. App. 3d 765, 773 (2000) (taxpayer failed to show that it offered a course of study that fits into the general scheme of education established by the State where it introduced expert testimony that the taxpayer's program was "developmentally appropriate" and "educationally sound" because those statements were "conclusory at best."); see also *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149, 155 (1968) (when determining whether property is within the scope of an exemption, all facts are to be construed and all debatable questions solved in favor of taxation). Even more overridingly, in introducing those documents in support of its claim that the materials delivered to General Iron was later shipped out of state, Golf does not establish the source of the information which they purport to disclose concerning the activities of a third party, namely, General Iron, who has not provided any admissible records or testimony. Without producing any records from General Iron itself to document such subsequent out of state movements, Golf cannot sufficiently show that its trucks were used in interstate commerce. See *JM Aviation*, 341 Ill. App. 3d at 11 (even though the documents necessary to support the taxpayer's claim of an exemption under the Act were in the possession of a third party, this court found that the taxpayer could not rebut the Department's *prima facie* case without those documents as evidence). Accordingly, we conclude that the Department was well within its latitude of discretion in rejecting the sufficiency of Golf's rebuttal evidence, even under the less rigid, "more than incidental" standard used prior to August 14, 1999.

¶ 38 Having found that Golf did not overcome the Department's prima facie case of tax liability, we conclude that the burden of proof never shifted back to the Department to rebut the

evidence introduced by Golf. See *Quincy Trading Post, Inc. v. Department of Revenue*, 12 Ill. App. 3d 725, 729-30 (1973). Accordingly, Golf's contention that the Department failed to meet such burden of proof lacks merit.

¶ 39 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 40 Affirmed.