

installment sales was \$96,352.16.

During March and April of 1950 Appellant sold its installment accounts and at the close of business on April 30, 1950, it ceased operations. Thereafter Appellant filed a return and paid a tax in the amount of \$75.03 for the year ended April 30, 1950. The return reported sales of \$155,735.91, gross income from sales of \$122,258.60 and a net income from operations of \$1,875.79. Disposition of the balance remaining in the "unrealized profits" from installment sales account was shown as follows:

Balance - May 1, 1949	\$ 96,352.16
Add - Gross Profit on Reserve for Bad Debts at May 1, 1949	4,055.48
Total	<u>\$100,407.64</u>

Disposition

Bad debt write-off	\$ 3,742.96
Portion collected	51,489.27
Loss on Sale of Accounts Re- ceivable	29,721.01
Cancelled Sales	15,140.12
Adjustment	314.28
Total	<u>\$100,407.64</u>

The Franchise Tax Board adjusted Appellant's income for the income year ended April 30, 1949, by including therein the sum of \$96,352.16, the balance remaining as of April 30, 1949, in Appellant's "unrealized profits from installment sales," and issued the proposed assessment of additional tax which is the subject of this appeal. In computing the proposed assessment the Franchise Tax Board allowed a credit of \$50.03 of the \$75.03 which had been remitted by Appellant with its return for the year ended April 30, 1950, on the ground that Appellant was liable for only the minimum tax of \$25.00 for the period beginning May 1, 1950.

Section 19(e)(5) of the Bank and Corporation Franchise Tax Act (now Sections 25295 and 25295a of the Revenue and Taxation Code, as it read during the period in question, provided in part as follows:

"(5) Where a bank or corporation elects to report income from the sale or other disposition of property in the manner provided in this subsection and the entire income therefrom has not been reported prior to the year of dissolution or withdrawal of the bank or corporation, or cessation of business by the corporation, the remainder of the income therefrom shall

be included in the computation of the measure of the tax for the last year in which the bank was located or the corporation did business in this State; no abatement shall be allowed under the provisions of Section 13(k) of this act for any tax measured by such income ...

'Cessation of business' as herein used means the failure to do business during an entire taxable year."

Appellant states that, since it continued its business activity through April 30, 1950, the last day of its fiscal year, the cessation of its business occurred in the year following April 30, 1950, according to the terms of the statute. It contends, accordingly, that its last income year is the year ended April 30, 1950, and that under Section 19(e)(5) it properly included all unrealized income from installment sales, not previously reported, in a tax return for that income year.

The Franchise tax is imposed for the privilege of doing business in this State and for any taxable year the tax is measured by the income of the preceding income year (except for commencing corporations). Sections 4(3) and 13(c) of the Bank and Corporation Franchise Tax Act; Spring Valley Co. Ltd. v. Johnson, 7 Cal, App. 2d 258.

Thus, without the application of Section 19(e)(5), the measure of the tax for the last year in which Appellant did business would have been its income for the next preceding income year. As we construe Section 19(e)(5), a corporation which has reported its income from installment sales on a deferred basis, as permitted by Section 19(e), is required, upon cessation of business, to include in the measure of the tax for the last year in which it does business in this State the unreported income from such sales which, except for the operation of Section 19(e), would have been included in the measure of its ^{tax} either for that year or previous years. As so interpreted Section 19(e)(5) is in accord with and gives effect to Sections 4(3) and 13(c).

Upon the admitted facts, the "last year that the corporation (Appellant) did business in this State" is the year ended April 30, 1950. The "measure of the tax" for that year as provided in Section 13(c), is its income for the year ended April 30, 1949. In the computation of income for the year ended April 30, 1949, however, Section 19(e)(5) requires the inclusion of unreported income from installment sales. We conclude, accordingly, that the action of the Franchise Tax Board must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of American Home Supply, Inc., to a proposed assessment of additional franchise tax in the amount of \$2,382.37 for the income year ended April 30, 1949, be and the same is hereby sustained;

-Done at Sacramento, California, t-his 19th day of May, 1954, by the State Board of Equalization.

Geo. R. Reilly, Chairman

_____, Member

Paul R. Leake, Member

Wm. G. Bonelli, Member

Robert C. Kirkwood, Member

ATTEST: Dixwell L. Pierce, Secretary