

Excerpt from Final Report of Hearing Officer Alan H. Friedman,
Final Report Regarding Proposed Multistate Tax Commission Formula
for the Uniform Apportionment of Net Income From Financial
Institutions
(April 28, 1994)

7. Discussion of Other Issues and Suggestions

a. *The Use of SINAA Elements for Determining State to which Loan or Credit Card Receivables have a "Preponderance of Substantive Contact"*

During the SIMS process much discussion was had from the institutions' perspective of the potential for two states assigning the identical loan to their respective property factor numerators, since the phrase "preponderance of substantive contact" contained in Section 4(g) (l) (B) did not give clear guidance. From the states' perspective, the issue of whether a loan is "properly" booked or assigned became an issue. By regulation, New York addresses the proper assignment issue by analyzing the facts of a given loan transaction and determining where the loan was solicited, investigated, negotiated, approved, and administered (the "SINAA" elements). The ultimate issue SINAA elements are used for is to determine if the state to which the loan (or credit card receivable) has been assigned is the state with the "preponderance of substantive contacts". The elements of SINAA are only applied if a question is raised on audit as to whether the loan was improperly assigned by the financial institution.

Representatives of some of the financial institutions complained that SINAA does not fairly solve the issue of loan assignment and adds five more concepts over which to argue. One suggestion was to create a presumption that the state in which the approval and administration were located should be assigned the loan. See 15, letter from Philip M. Plant of the Bank of America dated April 30, 1993. While this would add some more certainty, some states believed that this presumption would not lead to a reasonable assignment in many instances, especially after the original term of the loan had expired.

The Hearing Officer believes that the application of SINAA should help to reduce these types of conflicts in more cases than SINAA will cause conflict. However, the weight to be placed on these and, possibly, other relevant factors is not clear. Only experience in applying the SINAA elements will lead to a better understanding of its usefulness. The information presented to the Hearing Officer has been that while vague in its terms, SINAA has been

reasonably applied by the State and City of New York thus far, and representatives of institutions there are willing (not necessarily eager) to wait and see how the elements come into play in other states under the proposal. Therefore, the Hearing Officer has recommended the inclusion in Section 4(i) language incorporating the use of SINAA as setting out some measures to determine whether the questioned loans (and credit card receivables) have been properly assigned. Additionally, this is one area that all will benefit from a period of time and trial to determine the appropriateness of the concepts.