**§ 236. Disposition of pari-mutuel pools; percentage payable to state as a tax; authority of counties or certain cities to impose a tax.** 1. Every corporation authorized under this chapter to conduct pari-mutuel betting at a race meeting on races run thereat, except as provided in section two hundred thirty-eight of this article with respect to the franchised corporation, shall distribute all sums deposited in any pari-mutuel pool to the holders of winning tickets therein, providing such tickets be presented for payment before April first of the year following the year of their purchase, less an amount that shall be established and retained by such racing corporation of between fourteen to twenty percent of the total deposits in pools resulting from regular on-track bets and less sixteen to twenty-two percent of the total deposits in pools resulting from multiple on-track bets and less twenty to thirty percent of the total deposits in pools resulting from exotic on-track bets and less twenty to thirty-six percent of the total pools resulting from super exotic on-track bets. The retention rate to be established is subject to the prior approval of the commission. Such rate may not be changed more than once per calendar quarter to be effective on the first day of the calendar quarter. "Exotic bets" and "multiple bets" shall have the meanings set forth in section five hundred nineteen of this chapter. "Super exotic bets" shall have the meaning set forth in section three hundred one of this chapter. Of the amount so retained there shall be paid by such corporation to the department of taxation and finance as a reasonable tax by the state for the privilege of conducting pari-mutuel betting on the races run at the race meeting held by such corporation, which tax is hereby levied, in the applicable percentage set forth in subdivision one of section one hundred thirty-six of this chapter. Any such racing corporation shall, for any twelve-month period beginning on April first in nineteen hundred ninety and any year thereafter, expend an amount equal to at least one-half of one percent of its on-track bets during the immediately preceding calendar year for enhancements consisting of capital improvements as defined by section two hundred thirty-seven of this article, repairs to its physical plant, structures, and equipment used in its racing or wagering operations and five special events at each track in each calendar year, not otherwise conducted in the ordinary course of business, the purpose of which shall be to encourage, attract

and promote track attendance and encourage new and continued patronage, which events shall be subject to the prior approval of the commission for purposes of this subdivision. In the determination of the amounts expended for such enhancements, the commission may consider the immediately preceding twelve-month calendar period or the average of the two immediately preceding twelve-month calendar periods. Provided further, however, that of the portion of the increased amounts retained by such corporation above those amounts retained in nineteen hundred eighty-four, an amount of such increase shall be distributed to purses in the same proportion as commissions and purses were distributed during nineteen hundred eighty-four as certified by the commission.

Such corporation shall pay to the New York state thoroughbred breeding and development fund one-half of one percent of the total daily on-track pari-mutuel pools from regular, multiple and exotic bets, and three percent of super exotic bets.

Such corporation shall distribute to purses an amount equal to fifty percent of any compensation it receives from simulcasting or from wagering conducted outside the United States. Such corporation shall pay to the commission as a regulatory fee, which fee is hereby levied, six-tenths of one percent of the total daily on-track pari-mutuel pools of such corporation.

2. The balance of the retained percentage of such pool shall be held by such corporation for its own use and purposes, except that in addition to any payments to purses provided for in subdivision one of this section, an amount equal to two and one-half percent of the total pools resulting from on-track regular bets and exotic bets and an amount equal to three and one-half percent of the total pools resulting from on-track multiple bets and an amount equal to twelve percent of on-track super exotic bets shall be used exclusively for the purpose of increasing purses (including stakes, premiums and prizes) awarded to horses in races conducted by such corporation. Such two and one-half percent and three and one-half percent shall be in addition to (i) four and one-half percent of such total pools resulting from regular and multiple wagers and five and one-half percent of such total pools

resulting from exotic wagers, or (ii) the percentage of such total pools used for purses (including stakes, premiums and prizes) during the year nineteen hundred eighty-two, whichever is larger. Such percentage of the total pools mentioned in this subdivision shall be used for purses (including stakes, premiums and prizes) in races hereafter conducted by such corporation, and any portion not so used during any year shall be so used during the following year. The commission shall report annually, on or before July first, to the director of the budget, the chair of the senate finance committee and the chair of the assembly ways and means committee the extent to which such corporation used and retained percentages for operations, maintenance, capital improvements, advertising and promotion, administration and general overhead and evaluate the effectiveness and make recommendations with respect to the application of the rates of taxation. Such report shall also specify the amount of such retained percentages used for investments not directly related to racing activities and such amounts used to declare dividends or other profit distributions, additions to capital stock, its sale and transfer and additions to retained earnings. Such reports shall also include an analysis of any such agreements or proposals to conduct or otherwise expand wagers authorized under article ten of this chapter and present its conclusions with respect to the conduct of such wagering, the nature of such proposals and agreements, and recommendations to ensure the future maintenance of the intent of this article.

3. Maintenance of pari-mutuel racing activity. For any calendar year commencing on or after January first, nineteen hundred eighty-nine, a racing corporation in zone two shall not conduct fewer pari-mutuel programs and pari-mutuel races at its facilities than ninety percent of the programs and races so conducted during nineteen hundred eighty-five or during nineteen hundred eighty-six, whichever is less, unless such corporation demonstrates to the satisfaction of the commission good cause due to factors beyond the control of such corporation or because the commission finds that it would be uneconomical or impractical for such corporation to be assigned or conduct the prescribed number.

4. The payment of the state tax imposed by this section shall be made to the commissioner of taxation and finance on the last business day of

each month and shall cover taxes due for the period from the sixteenth day of the preceding month through the fifteenth day of the current month provided, however, that such payments required to be made on March thirty-first shall include all taxes due and accruing through the last full week of racing in March of the current year or as otherwise determined by the commissioner of taxation and finance, and shall be accompanied by a report under oath, showing the total of all such contributions, together with such other information as the commissioner of taxation and finance may require. A penalty of five percent and interest at the rate of one percent per month from the date the report is required to be filed to the date of payment of the tax shall be payable in case any tax imposed by this section is not paid when due. If the commissioner of taxation and finance determines that any moneys received under this subdivision were paid in error, the commissioner of taxation and finance may cause the same to be refunded without interest out of any moneys collected thereunder, provided an application therefor is filed with the commissioner of taxation and finance within one year from the time the erroneous payment was made. Such taxes, interest and penalties when collected, after the deduction of refunds of taxes erroneously paid, shall be paid by the commissioner of taxation and finance into the general fund of the state treasury.

5. No county, city, town, village or other political subdivision of the state may impose, levy or collect a tax on admission fees or tickets of admission, on wagers made by patrons, in the form of purchases of pari-mutuel tickets or upon such tickets, on pari-mutuel pools, on breaks, on dividends or payments made to winning bettors, or on that part of the pari-mutuel pools to be retained by racing corporations under this section, except as otherwise provided in this chapter.