§ 238. Disposition of pari-mutuel pools of the franchised corporation; percentage payable to state as a tax; authority of counties or certain cities to impose a tax. 1. (a) The franchised corporation authorized under this chapter to conduct pari-mutuel betting at a race meeting or races run thereat shall distribute all sums deposited in any pari-mutuel pool to the holders of winning tickets therein, provided such tickets are 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 franchised corporation of between twelve to seventeen percent of the total deposits in pools resulting from on-track regular bets, and fourteen to twenty-one percent of the total deposits in pools resulting from on-track multiple bets and fifteen to twenty-five percent of the total deposits in pools resulting from on-track exotic bets and fifteen to thirty-six percent of the total deposits in pools resulting from on-track super exotic 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. For purposes of this section, a "pick six bet" shall mean a single bet or wager on the outcomes of six races. Out of the amount so retained there shall be paid by such franchised corporation to the commissioner 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 meetings held by such franchised corporation, which tax is hereby levied, in the applicable percentage set forth in subdivision one of section one hundred thirty-six of this chapter. Payment to the New York state thoroughbred breeding and development fund by such franchised corporation shall be one-half of one percent of total daily on-track pari-mutuel pools resulting from regular, multiple and exotic bets and three percent of super exotic bets and for the period April first, two thousand one through December thirty-first, two thousand twenty-seven, such payment shall be seven-tenths of one percent of regular, multiple and exotic pools.

(b) An amount equal to fifty percent of any compensation received by a franchised corporation from simulcasting or from wagering conducted

outside the United States or outside New York state and within the United States shall be distributed to purses, except with respect to such compensation received from Connecticut which shall be computed as a percentage of wagering handle in a manner approved by the commission.

(c) An amount equal to fifty percent of any compensation received by the franchised corporation from simulcasting or from wagering conducted outside the United States shall be distributed to purses.

(d) (i) The franchised corporation shall conduct a race meeting at Aqueduct racetrack during the months of December, January, February, March and April. For purposes of this paragraph such race meeting shall consist of not less than ninety-five days of racing unless otherwise agreed to in writing by the New York Thoroughbred Breeders Inc., the New York thoroughbred horsemen's association (or such other entity as is certified and approved pursuant to section two hundred twenty-eight of this article) and approved by the commission. Not later than May first of each year, the commission shall determine whether a race meeting at Aqueduct racetrack consisted of the number of days as required by this subparagraph. In determining the number of race days, cancellation of a race day because of an act of God that the commission approves or because of weather conditions that are unsafe or hazardous that the commission approves shall not be construed as a failure to conduct a race day. Additionally, cancellation of a race day because of circumstances beyond the control of such franchised corporation for which the commission gives approval shall not be construed as a failure to conduct a race day.

(ii) Such franchised 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 franchised corporation.

2. a. Subject to the provisions of this section the payment of such state tax 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, and shall be accompanied by a report under oath, showing such information as the commissioner 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 the payment of the tax shall be payable in case any tax imposed by this section is not paid when due. If the commissioner determines that any moneys received by the commissioner under this section were paid in error, the commissioner may cause the same to be refunded without interest out of any moneys collected thereunder, provided an application therefor is filed with the commissioner 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 into the general fund of the state treasury.

b. The balance of the retained percentage of such pool shall be held by such franchised corporation for its corporate purposes, except as provided in paragraph c of this subdivision.

c. An amount equal to five and ninety-four hundredths percent of the total pools resulting from on-track regular bets and an amount equal to five and ninety-four hundredths percent of the total pools resulting from on-track multiple and exotic bets, and twelve percent of the total pools resulting from super exotic bets shall be used exclusively for purses (including stakes, premiums and prizes) awarded in races conducted by such franchised corporation. Any portion of such percent not so used during any year shall be so used during the following year.

3. 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 revenue retained by the franchised corporation, except as provided in former article two-B of the general city law, and as otherwise provided in this chapter.