



Finance and Tax Subcommittee

Tuesday, February 5, 2013

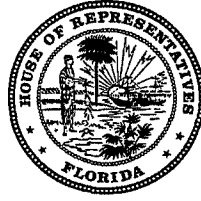
2:00 p.m.

Morris Hall

MEETING PACKET

The Florida House of Representatives

Finance and Tax Subcommittee



Will Weatherford
Speaker

Ritch Workman
Chair

AGENDA

February 5, 2013
2:00 p.m.
Morris Hall

- I. Call to Order/Roll Call
- II. Chair's Opening Remarks
- III. Taxation and Communications Services – staff presentation and public comment
- IV. Local Business Tax Overview – staff presentation and public comment
- V. Remote Commerce Taxation – staff presentation and public comment
- VI. Business Filing Fees – staff presentation
- VII. Closing Remarks and Adjournment

OVERVIEW OF THE TAXATION OF COMMUNICATION SERVICES

Finance and Tax Subcommittee
Florida House of Representatives
February 5, 2013

TAXATION OF COMMUNICATIONS SERVICES

- **Five Taxes:**
 - State Communications Services Tax
 - State Gross Receipts Tax
 - State Sales Tax on certain “pre-paid” calling arrangements
 - State E911 fee
 - Local Option Communications services taxes (cities and counties)

- “Communications Services Tax Simplification Law” (2001)...consolidated a variety of state and local taxes

HISTORIC COLLECTIONS

Historic Collections (Millions, State Fiscal Year)				
Year	Gross Receipts Tax	State CST Collections	E911 Collections	Local Option Collections
2001-02	\$391.7	\$540.6	N/A	\$426.7
2002-03	\$383.0	\$838.2	N/A	\$739.3
2003-04	\$383.1	\$898.8	N/A	\$711.7
2004-05	\$405.7	\$984.3	\$121.0	\$802.4
2005-06	\$422.9	\$1,059.4	\$129.1	\$843.3
2006-07	\$441.0	\$1,097.4	\$131.2	\$875.4
2007-08	\$455.9	\$1,146.6	\$129.4	\$888.5
2008-09	\$473.1	\$1,134.1	\$127.8	\$915.8
2009-10	\$431.7	\$1,136.5	\$125.2	\$862.7
2010-11	\$432.2	\$1,058.2	\$123.3	\$816.2
2011-12	\$424.4	\$1020.1	\$123.0**	\$795.9
2012-13	\$407.0*	\$999.8*	\$122.8**	\$737.6*

*Estimate as of November, 2012

**Estimate as of February, 2012

“COMMUNICATIONS SERVICES”

- **“Communications Services”** = “the transmission, conveyance, or routing of:
 - Voice, data, audio, video, or any other information or signals, including video services,
 - To a point, or between or among points,
 - By or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.”

- **It does NOT include:**
 - Information services
 - Installation or maintenance
 - Sale or rental of tangible personal property
 - Late payment, bad check, and billing charges
 - Internet access

TAXATION OF COMMUNICATIONS SERVICES

- State Communications Services Tax (Ch. 202)
 - Tax rate = 6.65% *except*
 - Tax rate = 10.8% on Direct to Home Satellite
 - **Exempt:**
 - Residential land line service
 - Limited pre-paid
 - Shared with local governments

- State Gross Receipts Tax (Ch. 203)
 - Tax rate = 2.37% *except*
 - Additional Tax rate = 0.15% on services other than residential land line
 - **Exempt:** Limited pre-paid

TAXATION OF COMMUNICATIONS SERVICES

- State Sales Tax on Pre-Paid calling arrangements
 - Applies to pre-paid plans **exclusively for telephone calls**
 - Tax rate = 6% plus local option sales tax
- State E911 charge on voice communications (Ch. 365)
 - Tax rates = 50 cents per month per line
 - **Exempt:** “Prepaid” mobile wireless (until 7/1/2013)
- Local Option Communications Services Tax (Ch. 202)
 - Tax rates = vary widely, up to 7.12% (122 different rates in 2012)
 - **Exempt:** Direct to Home Satellite (per federal law)

TAX RATE SUMMARY

<u>Service Type</u>	<u>Gross Receipts Tax</u>	<u>CST/ Sales Tax</u>	<u>Local*</u>	<u>Total*</u>
General	2.52%	6.65%	5.04%	14.21%
Res. Land Line	2.37%		5.04%	7.41%
Satellite	2.37%	10.80%		13.17%
"Prepaid"		6.00%	0.62%	6.62%

*Estimated statewide averages.

LOCAL CST RATE AUTHORITY

- Maximum rates
 - Municipalities and Charter Counties 5.1%
 - Non-Charter Counties 1.6%
- Add-on rates – Permit Fee Election
 - Municipalities and Charter counties .12%
 - Non-Charter Counties .24%
- Local Option Sales Tax Surcharge add-ons
 - Applies in both municipalities and unincorporated areas
 - Seven different possible rate amounts
 - Ranges from 0.0% to 0.9%
- Conversion Rates and Emergency Rate
 - Can exceed maximum rate

LOCAL TAX RATE DISTRIBUTION

Rate Range	Population	% of total	Cumulative %	Number of Jurisdictions
0-1%	116,310	0.62%	0.6%	12
>1%-2%	2,972,266	15.92%	16.5%	34
>2%-3%	562,734	3.01%	19.6%	51
>3%-4%	1,195,850	6.40%	26.0%	11
>4%-5%	1,050,367	5.62%	31.6%	14
>5%-6%	12,080,389	64.69%	96.3%	297
>6%-7.12%	695,452	3.72%	100.0%	62

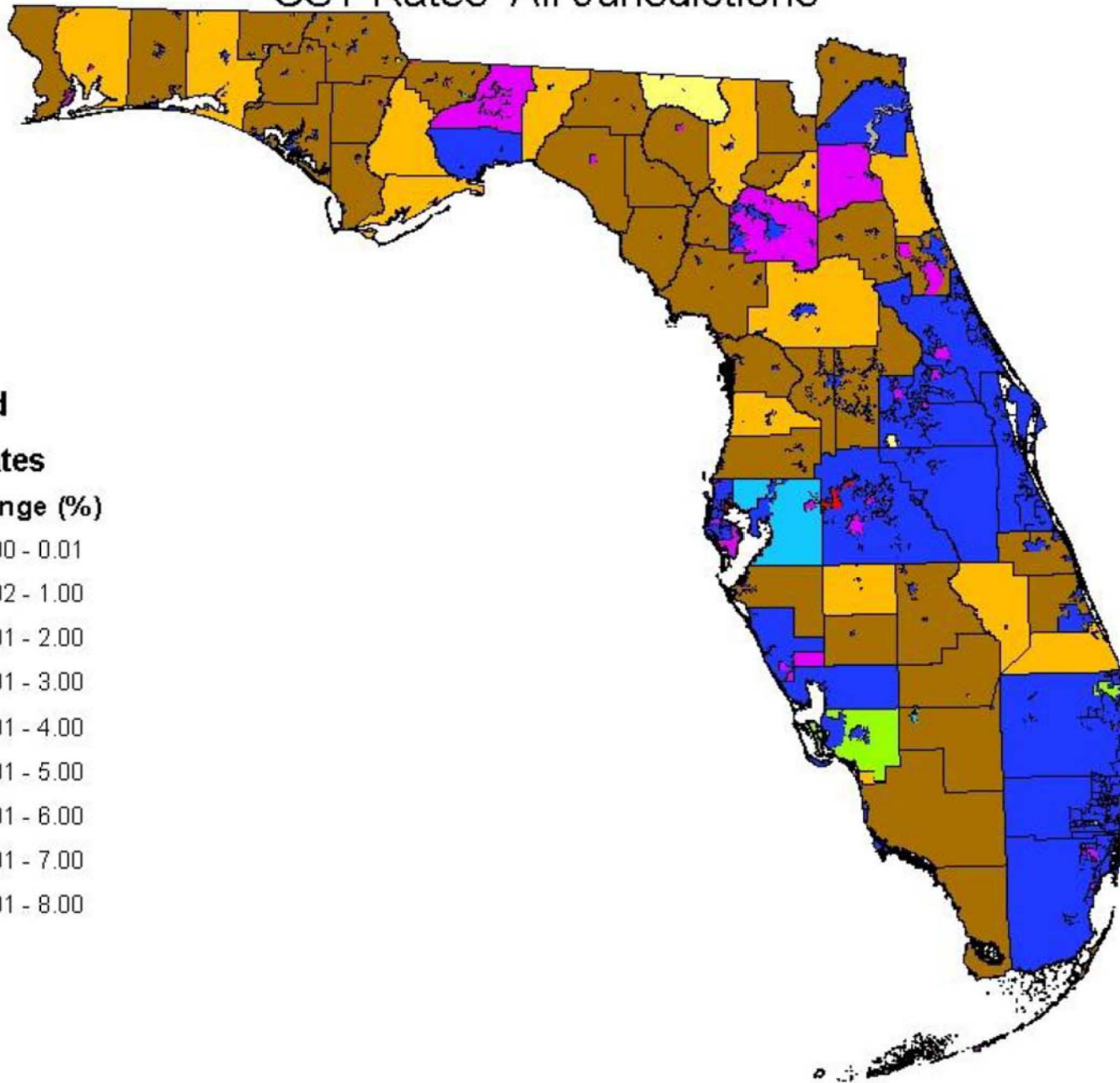
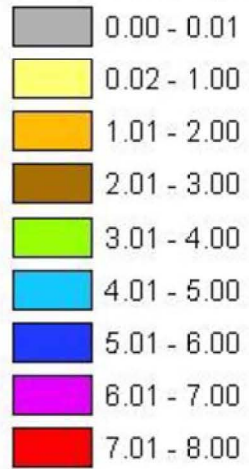
Includes surtax conversion

CST Rates- All Jurisdictions

Legend

CST Rates

Rate Range (%)



CST PROVIDERS – STRUCTURE OF INDUSTRY

- Heavily concentrated industry
 - Approximately 3500 dealers registered for CST
 - Ten largest remit 69.8% of tax
 - Twenty-five largest remit 90% of tax
 - Fifty largest remit 96.1% of tax
 - Seventy-five largest remit 97.5% of tax
 - The smallest 3400 providers combined remit less than 3% of tax

CST DEALER COLLECTION ALLOWANCE

- Communication Services Tax dealers receive a collection allowance if certain conditions are met
- The collection allowance is:
 - “...for the purpose of compensating persons providing communications services for the keeping of prescribed records, the filing of timely tax returns, and the proper accounting and remitting of taxes.”
- 0.75% or 0.25% of collections depending on:
 - Type of database dealer uses for situsing (assigning to the correct jurisdiction) customers for purposes of local option taxes
- The collection allowance returns approximately \$15 million a year to dealers

FEDERAL LAW LIMITATIONS

- Internet Tax Freedom Act – 2004
 - Generally preempts state taxation of internet access charges,
 - Including telecommunications services used by a provider of internet access service to provide internet access
 - Unbundling of Internet Access
 - If charges for Internet access are aggregated with and not separately stated from taxable charges for telecommunications services then the charges for Internet access may be subject to taxation unless the Internet access provider can reasonably identify the charges for Internet access from its books and records
- Preemption of local government taxes on direct to home satellite

PRE-PAID SERVICES

- Current statute narrowly defines “pre-paid” services that are subject to sales tax
 - “Pre-paid calling arrangements”, among other things “consist exclusively of telephone calls” and are “sold in predetermined units or dollars whose number declines with use in a known amount”
 - **If narrow definition is not met, “pre-paid” services are subject to the other state and local communications services taxes**
- Industry practice has evolved in a manner inconsistent with current statute
- This discrepancy is particularly important when the CST and sales tax rates differ greatly.

PREPAID WIRELESS HANDSETS

2011 E 911 wireless receipts	\$77,299,279
Implied postpaid handsets - 2011	12,883,213
PSC Reported Wireless Handsets - 2011	17,900,000
Implied number prepaid handsets – 2011*	5,016,787
Implied Prepaid Handset Penetration – 2011**	28.0%

Source: Dept. of Revenue calculations for the Communications Service Tax Workforce

*– These estimates use a definition of pre-paid handset that is broader than the strict statutory definition

**-- *CTIA-The Wireless Association* estimated the market penetration of prepaid/Pay-as-you-go plans at 21.8% for 2010 in *CTIA's Wireless Industry Indices Report – May 2011*

Questions?

Local Business Tax Overview

LOCAL BUSINESS TAXES - AN OVERVIEW

Finance and Tax Subcommittee

February 5, 2013

LOCAL BUSINESS TAXES: THE BASICS

- ✘ Local business taxes are *NOT* regulatory license fees
- ✘ Chapter 205, F.S., authorizes counties and municipalities to levy the tax
 - + Local option
 - + Self administered

LOCAL BUSINESS TAXES: THE NUMBERS

- ✘ Who is levying?
 - + 30-40 counties
 - + 270-290 municipalities

- ✘ How much revenue (FY 2010-11)?
 - + Counties = \$28.9 million
 - + Municipalities = \$136.7 million

LOCAL BUSINESS TAXES: USAGE

- ✘ A **general revenue source** for local governments
 - + May be used for any legitimate local government purpose
 - + Includes debt service/bonding of the revenue stream

- ✘ Use for economic development is expressly provided for

LOCAL BUSINESS TAXES: PARAMETERS

- ✘ Based upon “reasonable classifications”
- ✘ Uniform throughout any class.
- ✘ Classification schemes and rates vary greatly across jurisdictions.

LOCAL BUSINESS TAXES: EXAMPLES

	<u>Tallahassee</u>	<u>Monroe County</u>	<u>Escambia County</u>	<u>Palm Beach</u>	<u>Tampa</u>
# of Classifications:	50	42	197	116	721
Rates:					
Highest	No flat cap- variable	\$812.50	\$26.25	\$1,264.00	\$2,170.53
Lowest	\$ 30.00	\$10.00	\$26.25	\$27.50	\$13.89
Examples:					
Barber Shop	\$9.45 per 1,000 sq. ft. plus \$3.68 per worker	\$225.00	\$26.25	\$139.50	\$115.76
Retail Store	\$9.45 per 1,000 sq. ft. plus \$0.74 per \$1,000 of inventory above \$5,000	\$30-\$500 based on # employees	\$26.25	\$365-\$1,264 based on sq. footage	varies- e.g. grocery stores \$115.76- \$2,170.53 based on sq. footage
Professional Office/Business	\$9.45 per 1,000 sq. ft. plus \$3.68 per nonprofessional worker	\$225.00	\$26.25	\$365.00	varies- e.g. administrative offices \$217.04-\$434.10 based on # of workers

LOCAL BUSINESS TAXES: PARAMETERS

- ✘ Jurisdictions have **limited ability to restructure** their tax
 - + 1972—State authorized counties and municipalities to levy a local business tax
 - + 1980--Certain rate increases permitted based upon the rates then in effect
 - + 1986--Miami-Dade, Broward, Monroe and Collier counties were allowed to increase their rates by an additional 50%
 - + 1993--Business reclassification and rate resets allowed following local equity study commissions. Had to be accomplished by October 1, 1995. Subsequent rate increases were limited
 - + 2007--Certain municipalities allowed to restructure, if done by October 1, 2008

LOCAL BUSINESS TAXES: PARAMETERS

- ✘ Today, classification structures for existing local business taxes are locked in, and rate changes are restricted.
- ✘ Jurisdictions that underwent earlier reclassifications may, every other year, increase or decrease tax rates by up to 5 percent.
 - + Increases must be enacted by at least a majority plus one vote of the governing body.

LOCAL BUSINESS TAXES: PARAMETERS

- ✘ Beginning October 1, 1995, a jurisdiction that has not adopted a local business tax is permitted to adopt one.
- ✘ Equity study commission required
- ✘ Tax rate structure:
 - + Must be reasonable
 - + Based on structure in certain adjacent local governments

LOCAL BUSINESS TAXES: EXEMPTIONS

- ✘ Nonprofit, customary religious, charitable, or educational activities
- ✘ Optional partial exemption for businesses located in enterprise zones
- ✘ Certain employees of businesses that are required to pay a local business tax

LOCAL BUSINESS TAXES: EXEMPTIONS

- ✘ Delivery and transportation of tangible personal property by a business that is otherwise required to pay a local business tax may not be charged a separate local business tax for such delivery or transportation service
- ✘ Certain nonresident persons regulated by the Department of Professional Regulation
- ✘ Persons engaged in specified farming activities
- ✘ Certain disabled persons, the aged, and widows with minor dependents

LOCAL BUSINESS TAXES: EXEMPTIONS

- ✘ Disabled veterans of any war or their unremarried spouses
- ✘ Charitable, religious, fraternal, youth, civic, service, or other similar organization that makes occasional sales or engages in fundraising projects that are performed exclusively by the members
- ✘ Certain mobile home setup operations

LOCAL BUSINESS TAXES: CONNECTION TO REGULATORY LICENSING REQUIREMENTS

- ✘ Any person applying for or renewing a local business tax receipt who is regulated by:
 - + The Department of Business and Professional Regulation
 - + The Florida Supreme Court, or
 - + Any other state regulatory agency, including any board or commission thereof,
- ✘ Must exhibit an active state certificate, registration, or license, before receiving a local business tax receipt.

LOCAL BUSINESS TAXES: CONNECTION TO REGULATORY LICENSING REQUIREMENTS

- ✘ Similar requirements for:
 - + Pharmacies and pharmacists,
 - + Assisted living facilities,
 - + Pest control,
 - + Health studios,
 - + Sellers of travel, and
 - + Telemarketing businesses.

LOCAL BUSINESS TAXES: CONCLUSION

Questions?

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**REMOTE COMMERCE TAXATION:
THE ISSUE AND POSSIBLE RESPONSES**

THE ISSUE

- ✘ Taxable sales over the internet are growing rapidly
- ✘ Tax due under current law is often not collected
 - + If seller doesn't collect, then the buyer should
- ✘ **Several hundred million dollars** in lost tax revenue to Florida annually

WHY AREN'T COLLECTIONS MADE?

✘ Sellers

- + U.S. Supreme Court decisions prevent states from compelling many remote sellers to collect and remit

✘ Florida Buyers

- + Don't know the law, or
- + No fear of being caught

“PHYSICAL PRESENCE”

- ✘ U.S. Supreme Court—1992 *Quill Corp v. North Dakota*
 - + Seller can't be compelled to collect unless has **physical presence**
 - ✘ This is the required connection to a state (“Nexus”)
 - + Absent nexus, requiring sellers to collect would unduly burden interstate commerce—**violating Commerce Clause of U.S. Constitution**
- ✘ Court said Congress could change this if they so desire

STATE RESPONSES

- ✘ States have responded in several ways:
 - + One big cooperative effort
 - + “Stand Alone” approaches
 - + Trying to get Congress to act

STREAMLINED SALES & USE TAX AGREEMENT (SSUTA)

- ✘ Multistate Compact—Active since 2005
- ✘ Joining requires state to simplify sales tax code
 - + Subject to annual review/approval
- ✘ Retailers *volunteer* to remit on sales into member states
- ✘ 24 states; over 1,800 dealers; annual collections through the compact = \$220 million (CY 2011).

“CLICK-THROUGH” NEXUS LAWS

- ✘ Out-of-State retailer has nexus if:
 - + Third party in-state entities refer business to the out-of-state retailer
 - + Usually above a certain threshold of sales annually
- ✘ Websites based in Florida with icons for customers to “click-through” to retailers
- ✘ Industry has often responded dramatically

SUBSIDIARY/AFFILIATE NEXUS LAWS

- ✘ Several other variations try to establish nexus for remote sellers, via relationships with affiliated companies
 - + Same trademarks & similar names
 - + In-state agents advertising or assisting with sales
 - + Distribution facilities or warehouses
 - + Installation and repair agents
 - + Member of group of corporations, one member of which has nexus

ENCOURAGING CONGRESS TO ACT

- ✘ Two versions of legislation have been filed in Congress
- ✘ Both would allow states to compel remote sellers to collect *if states first simplify their sales tax codes*
- ✘ Support has been growing, but the legislation remains contentious

THE END



On Business Filing Fees

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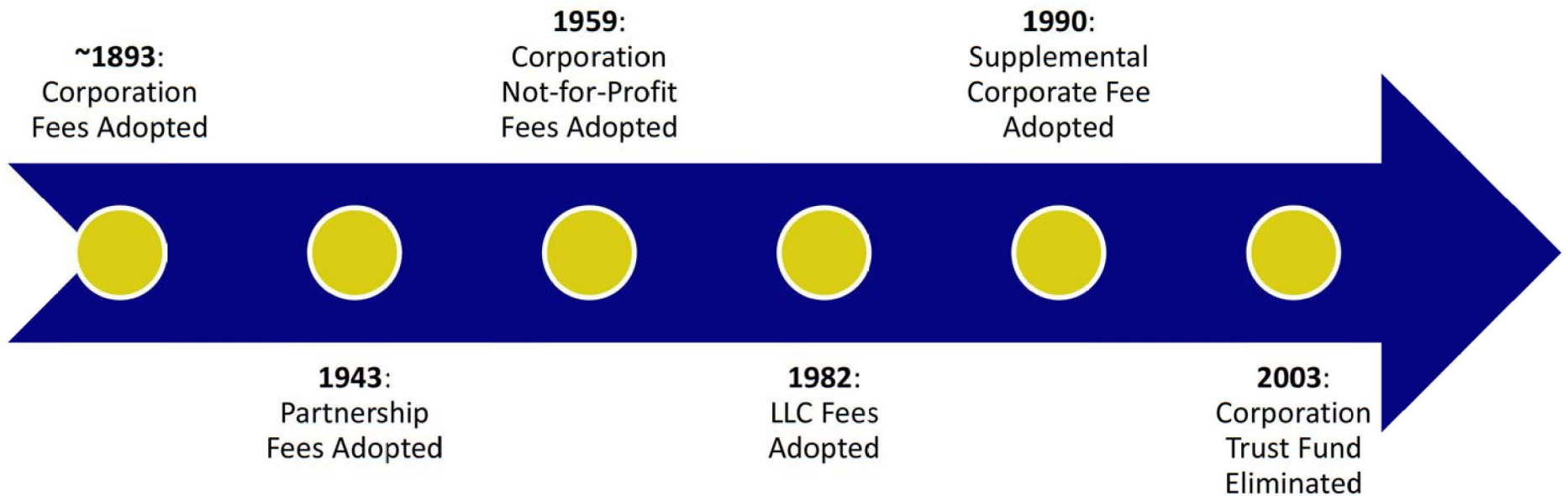


Business Filing Fees

- Corporations (Ch. 607, F.S.)
- Limited Liability Companies (Ch. 608, F.S.)
- Corporations Not-for-Profit (Ch. 617, F.S.)
- Limited Liability Partnerships (Ch. 620, F.S. Part I)
- Partnerships (Ch. 620, F.S. Part II)

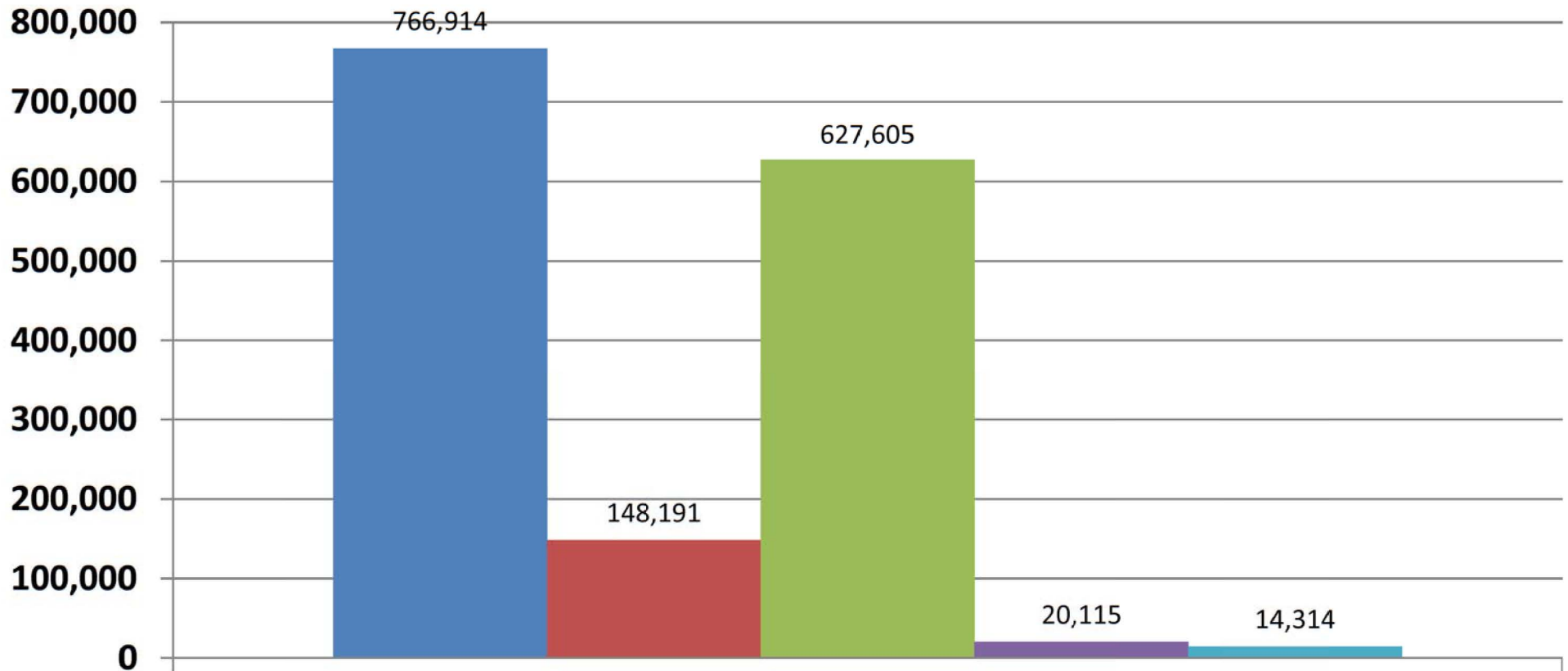


Historical Highlights





Business Entities

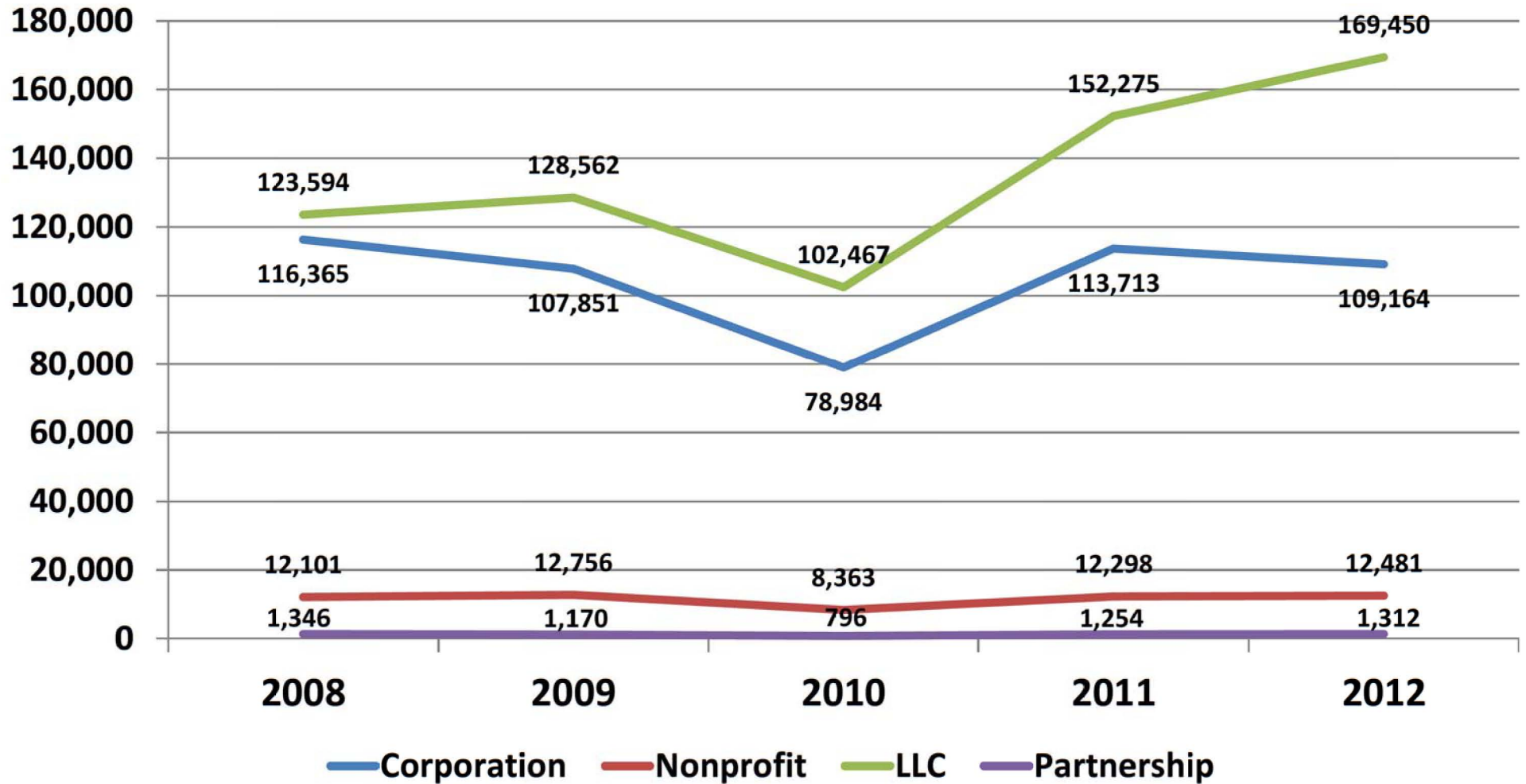


Entities as of October 2012

- Corporation - For Profit
- Corporation - Not-for-Profit
- Limited Liability Corporation
- Limited Liability Partnership
- General Partnership

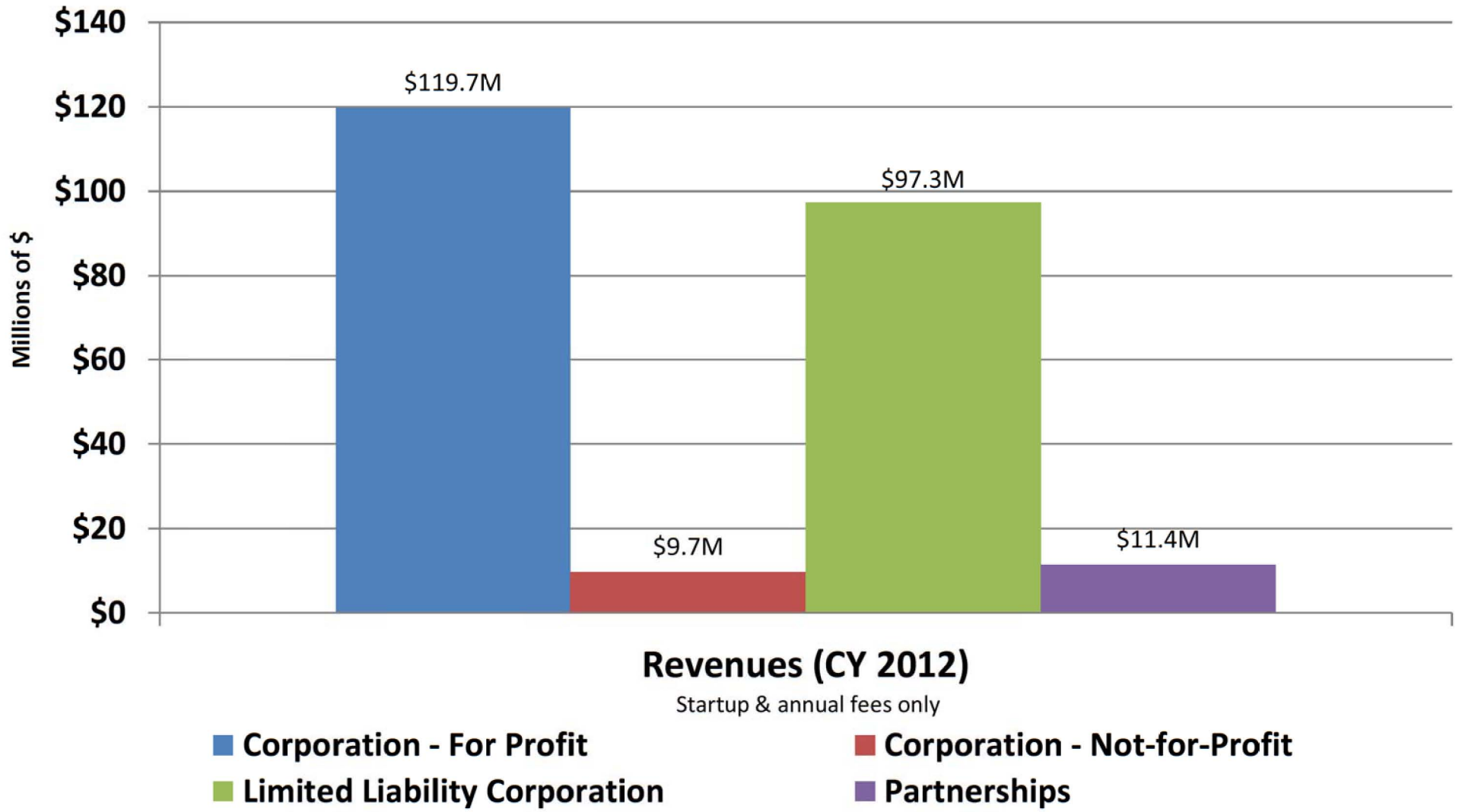


New Business Entity Filings



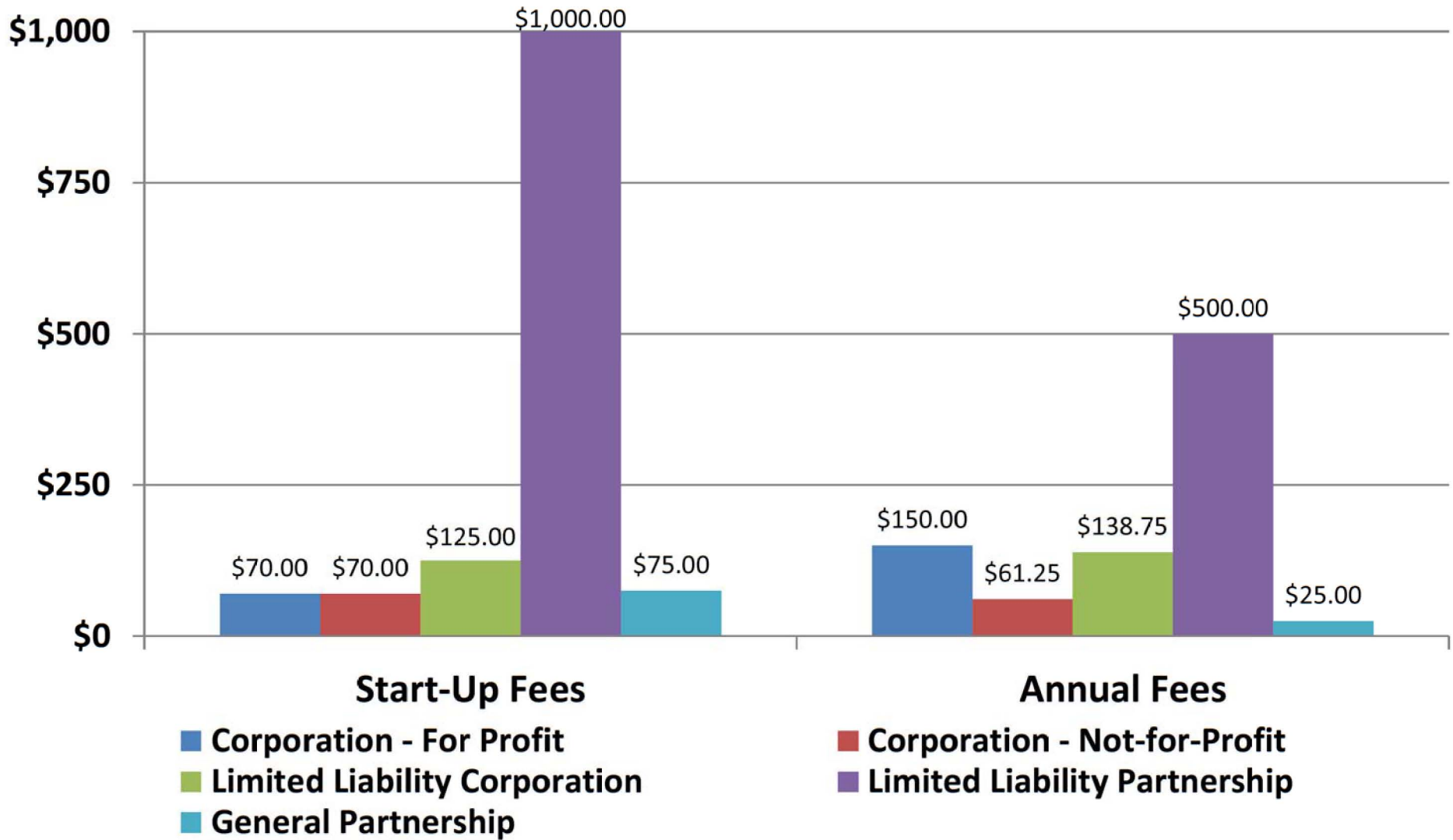


Business Filing Fee Revenues





Common Fees Comparison





Selected Other Fees Comparison

