

LYNCH MURPHY MCLANE LLP

ATTORNEYS AT LAW

ESTATE PLANNING ESSENTIALS: WILLS & TRUSTS

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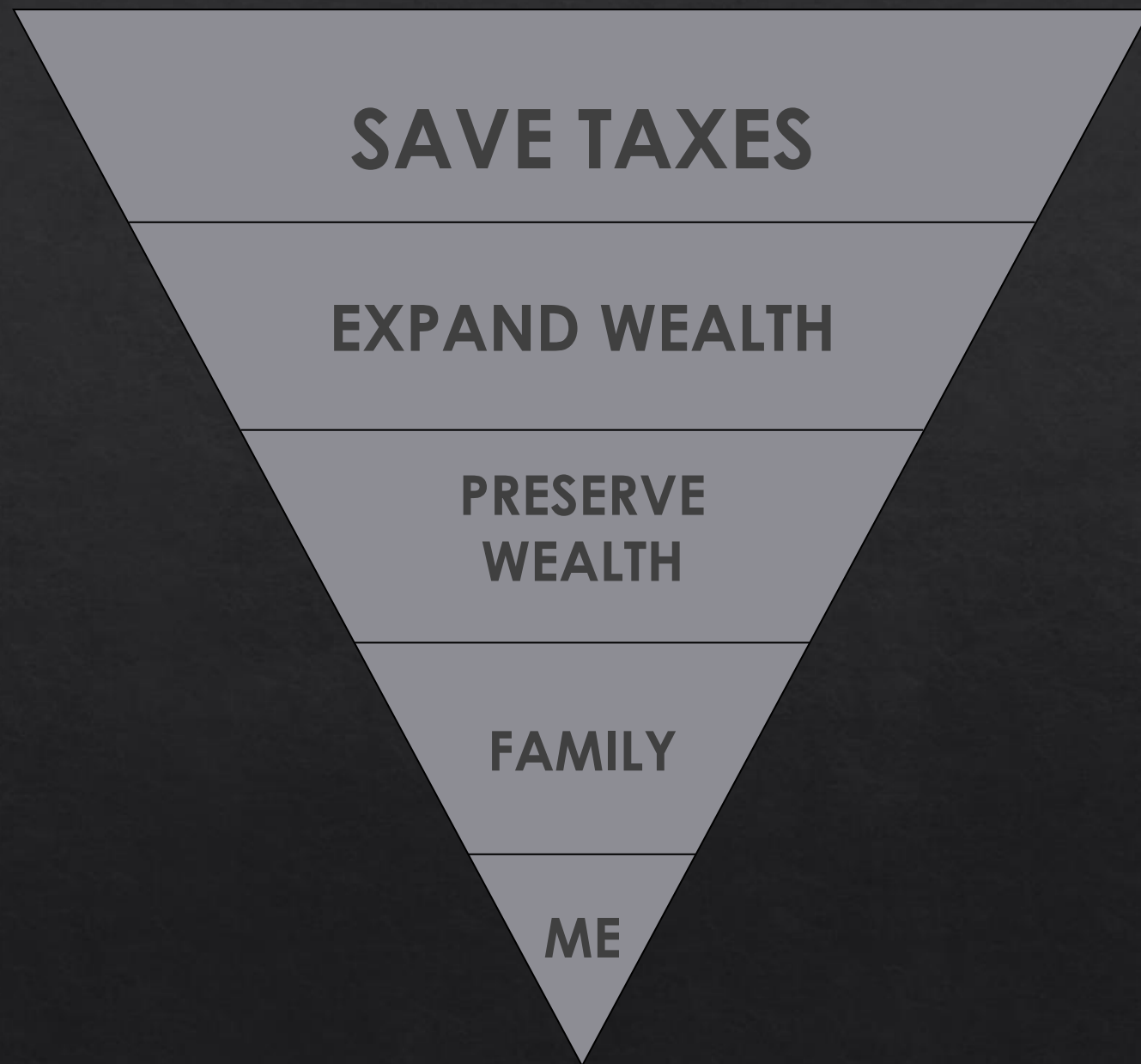
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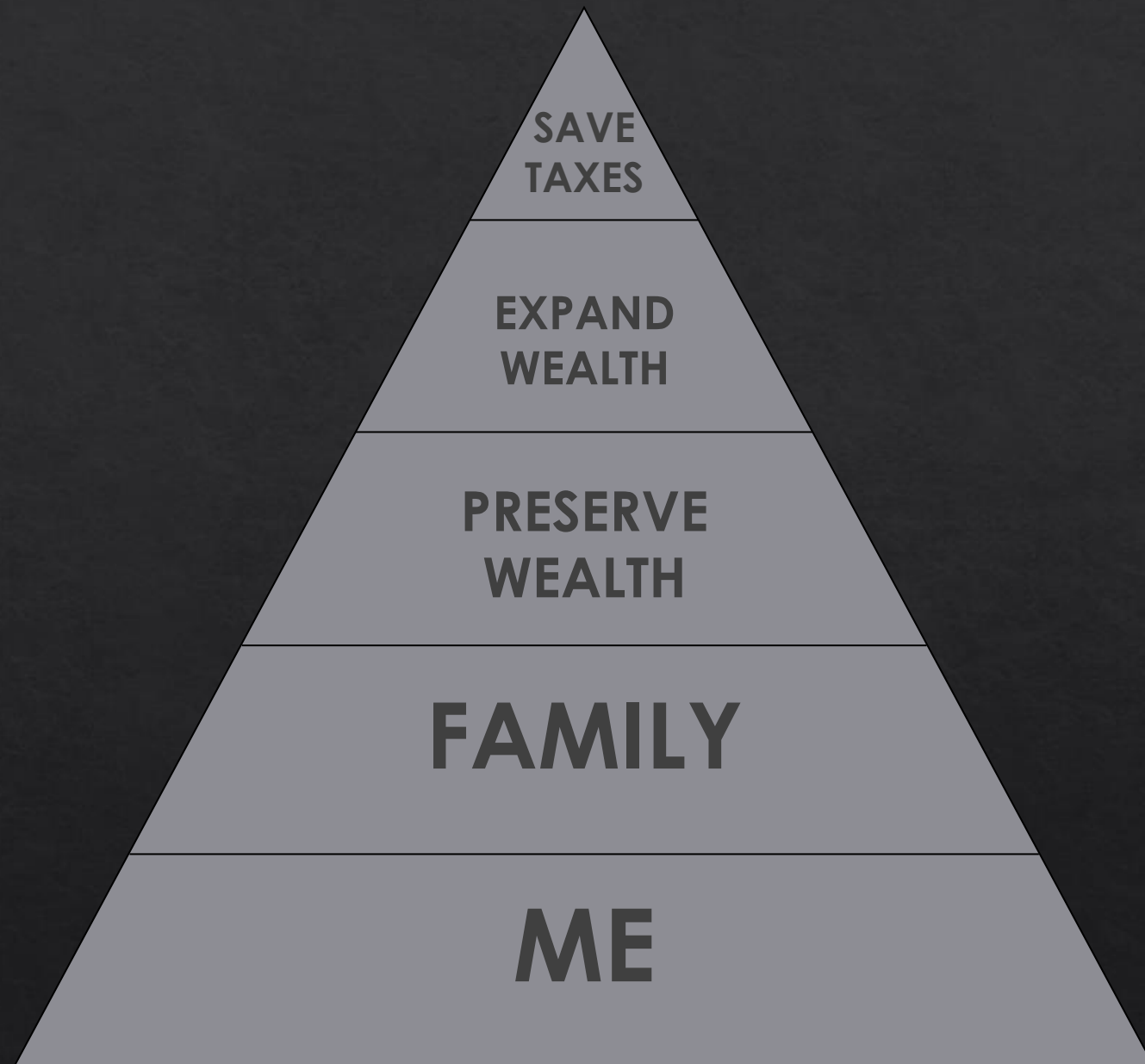
Estate Planning Options

- ◆ No documents (Joint Tenancy)
- ◆ Will and/or Powers of Attorney
- ◆ Revocable Living Trust

Estate Planning Pyramid?



Estate Planning Pyramid



Estate Planning Goals

- ◆ Protect one's dignity in event of disability
- ◆ Protect a spouse from predators / creditors
- ◆ Protect minor children
- ◆ Protect older children from bad choices
- ◆ Balance beneficiaries in blended families
- ◆ Leave a social legacy (charitable intent)
- ◆ Save on estate taxes

Estate Planning Challenges

- ◆ Maintaining control and privacy
- ◆ Planning for disability
- ◆ Asset transfer upon death
- ◆ Taxation
- ◆ Personal planning goals

What is a Will?

- ◆ Instructions for the Probate Court
- ◆ Effective upon death
- ◆ How to manage your property
- ◆ How to pay your bills
- ◆ How to distribute your property

What is Probate?

A public legal proceeding where a judge enforces the will instructions to transfer property after death.

Advantages of a Will/Probate

- ◆ Inexpensive in the short term
- ◆ Simple
- ◆ Allows appointment of guardians for minor children

Disadvantages of a Will/Probate

- ◆ More expensive in the long term
- ◆ Court involvement / public record
- ◆ Provides a forum for will contests
- ◆ Time consuming to administer
- ◆ Does not provide for disability

Disadvantages of a Will/Probate

Guardianship / Conservatorship

- ◇ A judge decides when I'm disabled, who takes control, and what the guardian can do
- ◇ Expensive (attorney, court & accounting fees)
- ◇ Time consuming
 - ◇ Record keeping
 - ◇ Court reports
- ◇ Public record

General Durable Power of Attorney

- ◇ Blank check
- ◇ Effective immediately
- ◇ No instructions
- ◇ No reporting requirements

What is a Trust?

A Trust is a document containing instructions for your trustee(s) to provide for your disability and to distribute your property to whom you want, when you want, and in the way you want.

A Trust is a Bucket

- ◆ Holds property (Corpus)
- ◆ You fill bucket (Grantor)
- ◆ Bucket watcher (Trustee)
- ◆ Ladle out contents (Sprinkle)
- ◆ Pour out contents (Dissolve)

Trustee

- ◊ Fiduciary relationship
- ◊ Trustee must follow trust provisions
- ◊ Holds property to benefit beneficiary
- ◊ Invests trust property
- ◊ Protects trust property

Two ways to create a Trust

◆ **Inter Vivos**

Created during lifetime (Living Trust)

◆ **Testamentary**

Created at death

Types of Trusts

◆ Revocable

- Right to change or amend
- Still part of estate

◆ Irrevocable

- No right to change or amend
- Value removed from estate

Advantages of a Trust

- ◊ Less expensive in the long term, since most work is done during lifetime
- ◊ Personalized definition of disability
- ◊ Personalized disability instructions
- ◊ More difficult to contest
- ◊ Private
- ◊ Maximum control of assets while living and after death
- ◊ More efficient tax planning

Revocable Trust Tax Planning

- ◆ Grantor transfers assets during lifetime
- ◆ At death, other assets received from estate (pour-over will) or as beneficiary (life insurance)
- ◆ Funds a Credit Shelter trust with remaining estate tax exemption for non-spouse beneficiary
- ◆ Surviving spouse has right to income and limited right to invade principal
- ◆ Avoids outright transfer to non-spouse beneficiary

All to Surviving Spouse

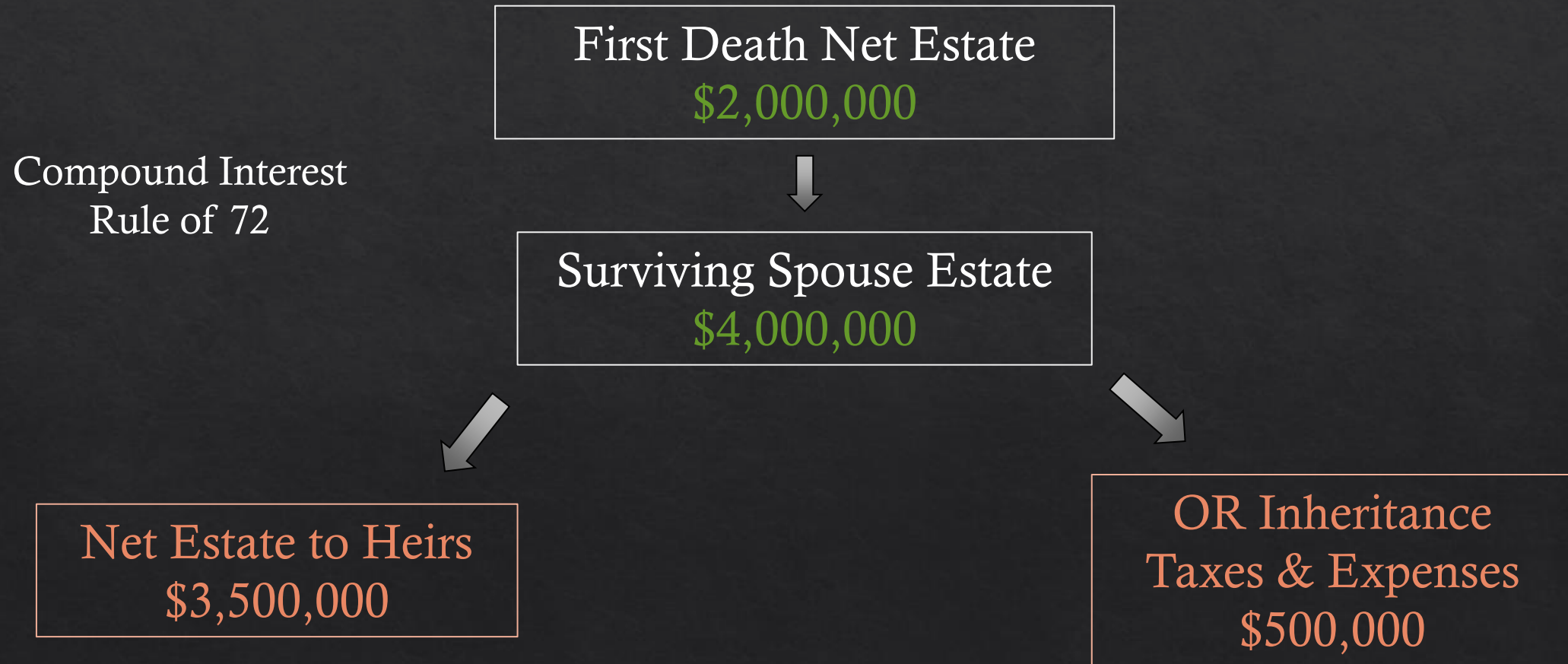
First Death Net Estate
\$2,000,000



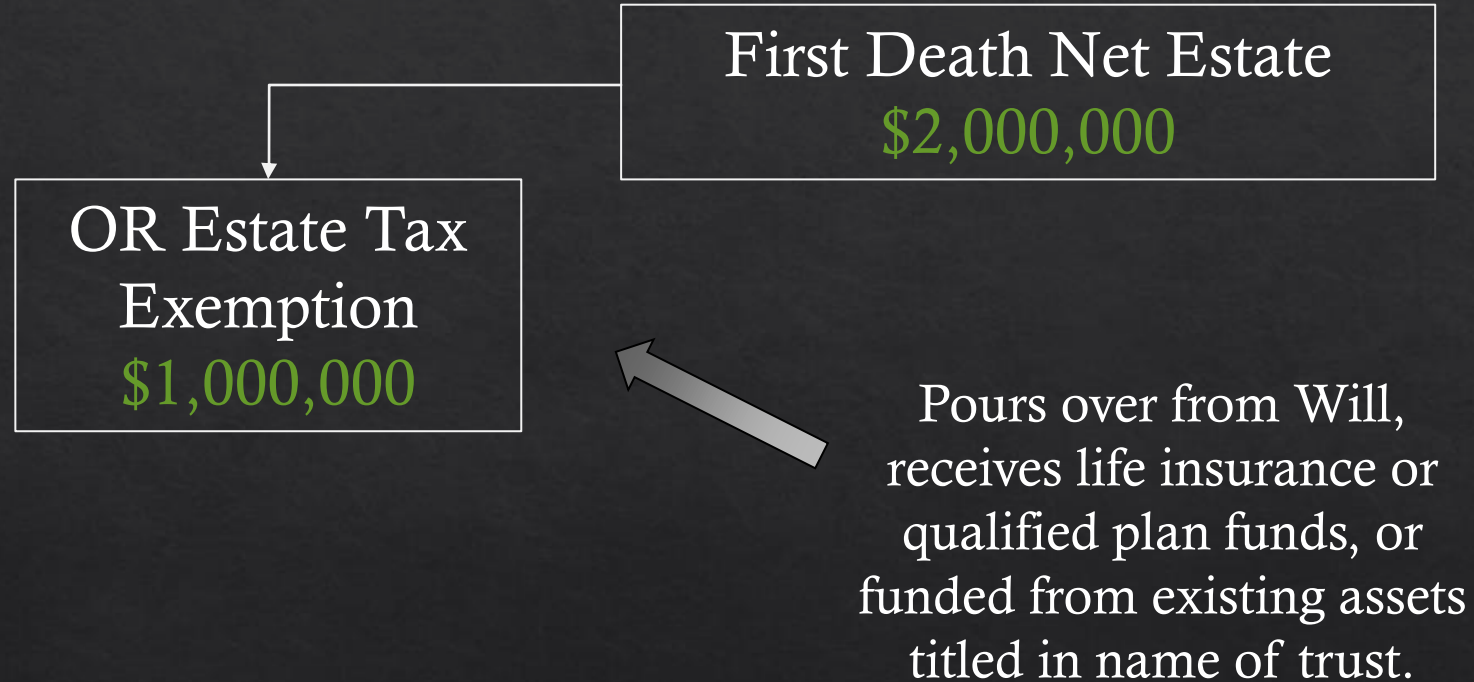
Surviving Spouse
\$2,000,000

NO ESTATE TAX

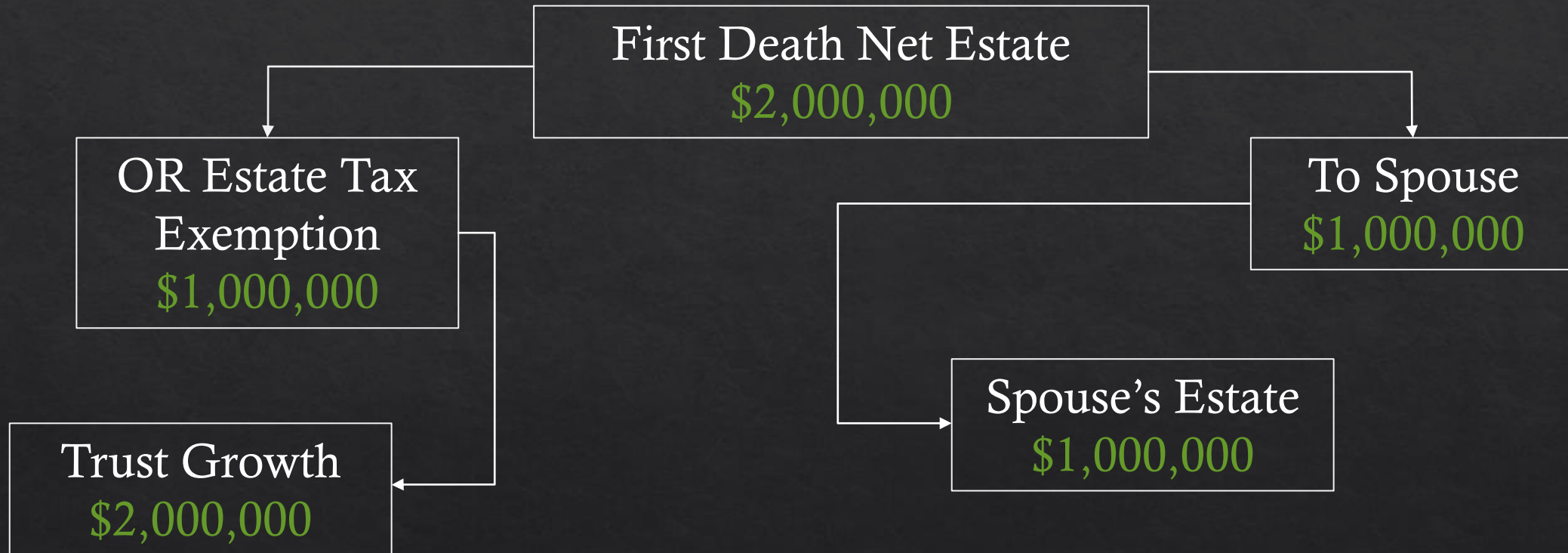
Tax Due at Second Death



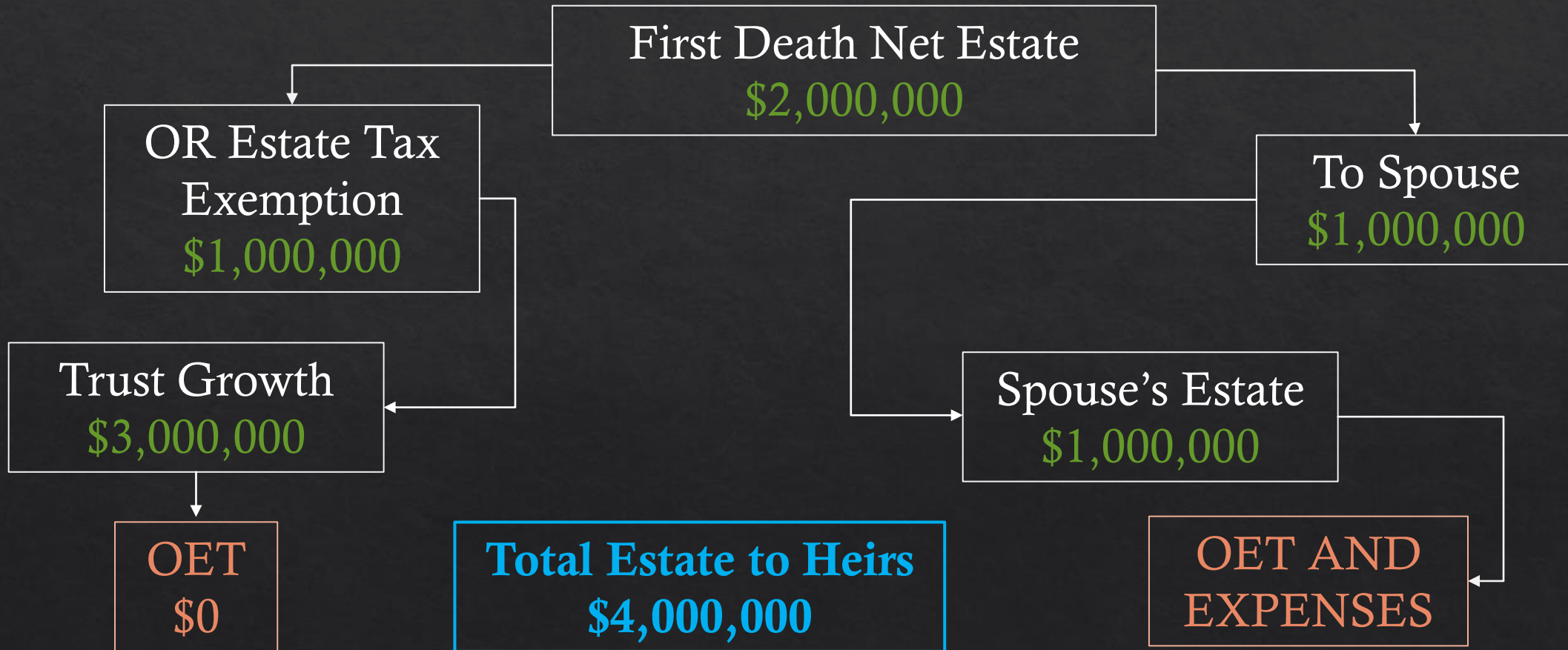
RLT Using the Exemption



RLT Using the Exemption



Tax Due at Second Death



True or False?

A spouse has no right to income or principal from a credit shelter trust.

Potential Trust Issues

- ◆ May not be current
 - New legal issues
 - New personal / family situations
- ◆ May not be fully funded
- ◆ May contain only standard definitions of disability without personal instructions
- ◆ May rely heavily on Powers of Attorney

A Final Thought

Estate Tax is the only
voluntary tax in the tax code

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