



SUN TZU AND THE ART OF PLANNING - PT. 2



"Cleverness has never been associated with delay."

— Sun Tzu

Calling all cool kids – please read on.

Chapter Six – Weak Points and Strong. Every situation has its challenges and opportunities. Perhaps one of the greatest opportunities is to know the time and place of battle. Those clients who adopt thoughtful transfer strategies during their lifetimes know that IRS challenges to their planning must be made before the statute of limitations runs. They can choose to plan and act when their businesses may be valued less or when future business opportunities remain uncertain. They can plan and act while the law is favorable or while the IRS accepts and tolerates certain ideas. Several ideas come to mind, including creating rolling, short-term GRATs, making gifts to a defective grantor trust or thoughtfully funding a charitable foundation while maximum charitable income tax deductions are allowed.

Far too many clients stand like the terra cotta soldiers, immovable, and believe they've done enough to protect their family and wealth. They are the modern day version of the Maginot Line, willfully deluded into thinking their defense is sufficient.

Regrettably, antiquated or ill-conceived defenses will be easily overrun by a modern-day Panzer Army of the IRS, state taxing authorities, divorcing in-laws and probing lawsuits. And even worse, like Paris in 1940, the attack may come when the client's vulnerable family least expects it and is unprepared for the assault.

Many clients have read that the current, generous estate and gift tax exemptions are "permanent." But those laws are only as permanent as the ink with which they were written and the Congressmen who wrote them.

Chapter Seven – Maneuvering. The brilliant general acknowledged one can maneuver too much or too little. How can one maneuver too much? In the military sense, one can attempt to devise a too complicated strategy that's doomed to failure. Over 200 years ago, General George Washington attacked Boston in an attempt to free it from British control. The attack, though certainly well-intentioned and thoughtful, failed as its many moving parts didn't work in perfect harmony.

Similarly, it's quite possible to "over-maneuver" in the estate-planning world. For example, if an advisor is suggesting that a client's Alaskan LLC purchase a premium-financed, private-placement life insurance

policy from his own newly created, captive, off-shore life insurance company, that might be a sign of too much maneuvering. Conversely, if a plan hasn't been updated in years, and wealth has substantially grown since the plan was implemented, that's likely evidence of too little maneuvering.

Chapter Eight – Variation in Tactics. Deploying the same tactics in different circumstances will rarely lead to success. For example, many planners used charitable remainder trusts (CRTs) in the 1990s when financial markets and income taxes were both relatively high. CRTs allowed clients to defer taxes into the future when income tax rates might eventually be lowered. In the early 2000s, when income tax rates were lower, some of those same planners continued to deploy CRTs, even though such a strategy was no longer ideal. Now, with marginal income tax rates approaching and even exceeding 50 percent and the S&P nearing an all-time high, the age of the CRT has returned.

For some younger and healthier clients, a long-term grantor retained annuity trust (GRAT) may make sense, while for others a GRAT wouldn't make any sense. Some circumstances call for a qualified personal residence trust, while others call for an outright gift or intra-family loan. The tactics of estate and income tax planning must be varied to exploit the circumstances.

As one military advisor observed, "The rules of strategy are few and simple. They may be learned in a week. They may be taught by familiar illustrations or a dozen diagrams. But such knowledge will no more teach a man to lead an army like Napoleon, than a knowledge of grammar will teach him to write" like Hemingway. The tools of estate planning also are few, but with thoughtful and strategic implementation, combination and preservation, they can produce spectacular results.

