Announcer (5s):

Welcome to the Maximize Business Value Podcast. This podcast is brought to you by Mastery Partners, where our mission is to equip business owners to maximize business value so they can transition their business on their terms. Our mission was born from the lessons we've learned from over 100 business transactions, which fuels our desire to share our experiences and wisdom so you can succeed. Now, here's your host, the CEO of Mastery Partners, Tom Bronson.

Tom Bronson (37s):

Hi, this is Tom Bronson and welcome to maximize business value. A podcast for business owners who are passionate about building long-term sustainable value in their businesses. In this episode, I'd like to welcome our guest Joel crouch, who is a tax attorney and partner at Meadows. Call your Reed cousins crouch and under man, I know they don't. Usually

Joel Crouch (60s):

I forget the crouch in there. I appreciate that. My mother said also,

Tom Bronson (1m 3s):

I always have to throw that in there cause you're, you're a named partner. He provides a tax and legal advice to businesses, wealthy individuals and families about their most demanding tax planning, IRS controversies, and estate planning. Now I met Joel through provisors the professional networking group that you've heard me talk about many times on this podcast. Let me tell you a little bit more about Joel. He's been recognized as one of the best in his field by Texas monthly and law and politics magazines. And by being named a Texas super lawyer from 2003 through 2021, he's also been named one of the best lawyers in Dallas by D magazine every year, since 2012, he's been recognized by best lawyers in America, in tax law every year, since 2015.

Tom Bronson (1m 58s):

And he was recognized by them as lawyer of the year in tax law for the Dallas Fort worth area for 2022, Joel has been recognized as a top rated lawyer in white collar defense by ALM, as published in the American lawyer, corporate counsel and the national law review. And he's also published various articles regarding IRS and tax procedures in those and many other publications. I gotta tell ya, I'm a little bit intimidated to have Joel on the podcast, but welcome to maximize business value. Joel, how are

Joel Crouch (2m 36s):

You? I'm glad to be here. Glad to do it.

Tom Bronson (2m 39s):

So why don't we start by having you tell us just a little bit about Meadows Collier? So I won't, if you're in there, you're named in there, but, but you guys go by Meadows call you, right?

Joel Crouch (2m 50s):

We do go by Metis collar. And I generally introduce myself as part of the Meadows Collier. So we're a, I think people would describe us as a tax boutique law firm. We have about 30 attorneys that, and we get, we deal with all sorts of tax issues. I do a lot in the, the tax controversy area, dealing with the IRS also have clients who would do tax planning for, we do pretty sophisticated estate planning. Our clients are generally entrepreneurs, small business owners, small closely held business owners, family, family, businesses, those kinds of things. I've been here. This, this, I would tell people this I've been here 34 years, almost 34 years, my entire career, which means I either like what I do or I don't interview.

Joel Crouch (3m 36s):

Well, one of the other, I have no idea which one it is by. Actually. I like, I like what I do. I like the people I work with it is interesting work. It is challenging work, which is what you always want something to, to challenge you, but it is it's fun work. And when I came out of law school, it was kind of what I decided I wanted to do.

Tom Bronson (3m 55s):

It's it's funny. I mean, did you clearly, you know, 12, take yourself back to your 12, 15 year old self. Oh, you know, someday I want to be a tax lawyer. Dad, you know, has anybody

Joel Crouch (4m 8s):

Dream of that?

Tom Bronson (4m 11s):

You know, why did you decide to become, I mean, thank God for people like you, right? Who really enjoy this, but why did you decide to become a tax attorney? And you've been doing that.

Joel Crouch (4m 22s):

It's a long, a terrible story. Tom, I have to tell you that, but I'll, I'll shorten a little bit. So when I was in, when I was in college, I decided I was going to be a math major. I was going to go teach math in school until I student taught seventh grade math. And that convinced me right there. I needed something else to do. And so I ended up going to law school because my then girlfriend who turned into my wife was going to law school. I said, oh, I'll do that too. So I ended up going to law school. And when I was in law school, first tax class, I took, I went, okay, I kinda like this, but I didn't want to do straight just planning tax work. I want to do something different. And so I found this firm, which at the time was the only one in town here in Dallas. There really did civil and criminal tax work and is kind of the area I wanted to get into.

Joel Crouch (5m 6s):

Obviously it's expanded beyond that and that there's some planning, also mistake planning for clients, but primarily I'm still doing controversy work and this was the place to land at that time. And so that's why I ended up where I am. I liked to tax when I was in law school. I know that's terrible. It makes me out as the biggest nerd in the world at this point. But so be it.

Tom Bronson (5m 24s):
Yeah, you're, you're one of those guys that curls up on a cool winter night, you know, next to a fireplace reading tax code dot ya.

Joel Crouch (5m 32s):
Oh, nothing better than that.

Tom Bronson (5m 35s):
Nice, nice glass of wine and nothing. Nothing like reading the tags. So now I imagine that your relationship with many of your clients starts like right after they receive a letter from the internal revenue service. Right? So let's say that my company has been notified that an income that it's income tax returns have been by the IRS for examination, is that how many of your relationships start? And

Joel Crouch (6m 4s):
Yeah. And usually what happened is my client doesn't contact him. He usually their CPA calls me at that point and says, Hey, we've got an issue here, potentially it is. And it depends. I get it. I get called in a certain time. I may be called in during the exam phase. I may be called in and the other things, there's a levels above that, that you can go to, but they'll get that letter from the IRS. And a lot of times the question is, why me? Why, oh, why in the world did I get picked? That's not an uncommon question. And the way the IRS decides who they're going to examine is based on a number of different things. There's something that's called the it's called the dif score. I believe it's the tremor of what's called the discreet fun at anyway, it's a scores.

Joel Crouch (6m 45s):
It scores a tax return. Basically they take a look at their turn at score and it comes into the IRS based on how similar returns. And it says, okay, this one looks off a little bit for years. We've all been trying to figure out, get, and get the code for the, for the diff scoring so that we could do our tax returns in such a way that it would be as low score, but nobody's ever been able to track, track that down at this point, ours won't give it to us. The other thing that can happen is, is let's say there's a, there's a matching problem. There's some information the IRS has that doesn't match up. It doesn't appear it's on the return. You picked up that way. The third thing that can happen is your may climate participated in what we're seeing a lot more now is what they, RS calls a reportable transaction.

Joel Crouch (7m 28s):
It's a transaction in which the artist is kind of keeping their eye on. Some examples of that are right now, there, there's a couple of big, big ones that are out there called micro captive insurance. The other one is

conservation easements, syndicated conservation easements, both of which are legitimate planning tools, both of which are good planning tools, but have been subject to maybe some abuse. And so the IRS knows this. And so they are, they're kind of tuning on those kinds of things. And so that's generally I see is it's one or two things on the return that have jumped up. Let's take a business. If a business is reporting losses every single year, that's going to cause the IRS to take a look at it.

Joel Crouch (8m 10s):
So that's, that's something, it became jump up also. So business already looking, I have clients ask me all the time, is this a red flag on the return? All depends. RS. These days, their examinations are low, not as doing as many, but if you think it's aggressive, it may be a red flag to the IRS.

Tom Bronson (8m 29s):
Yeah. You know, and a lot of people, especially small business owners manage their finances to minimize tax consequences. Right?

Joel Crouch (8m 39s):
Yeah. And I would tell you, the one thing that I would add to this is it's the one thing I see with most of my clients are small businesses or close to help businesses, family businesses. There's always that blurring of the line between what is business and what is personal because probably like your clients, my clients, a lot of times what they do and everything they do, including almost everything in their personal life is got a business tanked to it somehow, you know? And then in other words, they they're doing it for business purposes. And so a lot of times you get this kind of mixing of business and personal and that's, you can sometimes get into the problem there on the PR on the expense dot.

Tom Bronson (9m 13s):
Yeah, no doubt. No doubt. I do tell our clients that you want growth. And just, especially as you're getting close to a transaction, just pay your damn taxes now. Right?

Joel Crouch (9m 24s):
Tell that Tom, that would put me out of business.

Tom Bronson (9m 27s):
I know you're right. You're right. No, I want you to look. They need your help for more reasons than that. So now are there any, can the IRS just go back as far as they want to? Or are they statute of limitations on how far they can go back on that?

Joel Crouch (9m 42s):
Like everything else? Yeah. Well like everything else, there is a statue of limitation it's generally three years, but like anything else, there's also exceptions to that. So three years from the date, the return is filed

generally as your statute of limitations, it gets beyond three years. You pretty much home for at that point, there are exceptions to that. There's a, there's a, what's called a substantial understatement, which means there's a 25% investor omission of income. That's a six year statute limitations. There is a status limitations, no stacks limitations. If you file a false return, if there's something fraudulent on the return and the IRS has the, has the burden to show that there's something fraudulent on it, there's no statute of limitations on that. It's open-ended at that point. And then also with any situation, the RS can ask the, to ask the taxpayer to file a are, to assign a statute extension.

Joel Crouch (10m 30s):
In fact, what we're seeing these days is almost out of the box on every examination we are being asked now to extend the statute of limitations

Tom Bronson (10m 41s):
Now. So why, why would you agree to that?

Joel Crouch (10m 46s):
You're talking to one person who does not believe in extending the stats on the stations. The reason you might do it is if you think you're close to being, getting it resolved. I mean, in other words, a little more time may get, you may get it resolved. There are ways to extend it, that you can extend it for just a, a specific issue. There are some options there that you have. I, I am not, if it's just a general extension of the statute of limitations, I'm just not a big believer in that. I don't, I don't think it's a great idea, but, but the IRS will not the way they approach people. It's almost, you have to do it. And we always tell clients that you don't have to do it. Let me tell you why you shouldn't do it. And the reasons not to do it are why do I want somebody from the IRS having more time to look at your tax return and try to find justification for the time that they put into it.

Joel Crouch (11m 37s):
There's just no reason to do it. The answer for a lot of times from the IRS as well. But if you don't do that, we'll have to send this, this and this. And we'll talk, we can talk about this in a second. You want to, but frankly, there are options for now dealing with that. The exam is not your final, final place. There are options exam. There are options for doing it and dealing with it. So, you know, it's not the end of the world. If you don't agree with exam, I've had one case in my career, Tom, where I had somebody, It was a long time ago where they used to be a way you extended. There was, they used to have what was called an open-ended extension. Now they just have you extended for a year or something. And there was a, I got approached by a company that said, we have an open extension open and an extension it's been going on for years and go on for 10 years.

Joel Crouch (12m 23s):
And the IRS said not being shown up and it's just continuing. So they basically, we followed it and stopped the extension. But we told them before we did that said, what's likely going to happen is ours is going to

disallow all the expenses. So you're going to have a big number that shows up, we'll deal with it on the IRS end, but it's not a problem at the end of the day, it shouldn't hurt you at all. Well, he, we, we stopped the extension and basically the arsons walked away at that point. I mean, those are, those are few and far between, but they do happen.

Tom Bronson (12m 52s):
That's one of those deals where, you know, the guy that actually started it, he's been dead for five years and nobody, nobody at the IRS can understand why we even opened this in the first place. Right?

Joel Crouch (13m 1s):
Exactly. Exactly.

Tom Bronson (13m 2s):
Well, that's

Joel Crouch (13m 4s):
Right.

Tom Bronson (13m 4s):
It's a bit of a bluffing game all the way around. So now, so what happens if you just don't respond to the IRS? If they send you a letter saying that they're going to do an exam and what happens if you just choose to not respond to them?

Joel Crouch (13m 21s):
You know, th they're going to look for ways to get you to respond. I mean, they're going to do a couple of things. One is, is they will, they will can contact third parties to try to get information. They can. What they're trying to do is, you know, trying to find information, if you don't respond, they're gonna, they're gonna keep pushing to try to get there. Ultimately, if they cannot get you to respond and it's close enough to the statute limitations, they will issue. What's called a notice of deficiency, essentially says, look, based on the information we have, here's what we think that should be. You haven't provided any substantiation for your expenses, for example. So, because you haven't provided those or disallowing, all those, you get the notice of deficiency.

Joel Crouch (14m 3s):
The option then is to go and you go to a different level at the IRS at that point. That's not the end of the day, but my point to clients is when this kind of question comes up is, look, let's try to get this resolved at the IRS as quickly as possible, digging in your heels and not responding is not going to be the best answer, but they can go because I can make your life difficult. So it's best to respond, to try to get it, you know, try to get it resolved.

Tom Bronson (14m 29s):
Yeah, I, for sure, I, I can't imagine just not responding, but, but I'm sure that there are different things that go through different people's heads or that worse. They don't reach out to someone like you, they get a notice and then they ask for that extension and they go ahead and grant the extension before they talk to an attorney about it. You know, there's too many times business owners think, well, I have to respond because it was a government thing. No,

Joel Crouch (14m 57s):
Well, that's the thing. Well, I thought you were gonna say the one thing I have seen in the past is which is people see a letter from the IRS has come by certified mail and they just don't open it. And what happens is ultimately they start getting more letters and letters and they finally come see me. And they've got a stack of letters on which nobody's ever opened. There could be a check-in all in there for all we know, but they just, they just don't like seeing a letter from the IRS. It's gotta be bad. News must be bad news going from the IRS.

Tom Bronson (15m 26s):
Oh my God. Well, it makes my heart skip a beat. Every time I get one of those and this, and you know, it's funny, I've gotten one every year. Not, not an examination letter, but I've gotten a letter from the IRS and it, it, it stops my heart every time. Cause I've had somebody in college for the last 12 years. And every time I have to do the FAFSA, right. Fill that thing out. Then, then I get a letter from the IRS saying that someone filled that out well. Okay. It makes, it makes my heart skip a beat. That every time I go, oh, I got all that over there as white. Now let's say you get into the examination. Then you get into it with the IRS.

Tom Bronson (16m 7s):
Does the company have any rights during that examination? Yes.

Joel Crouch (16m 11s):
Yeah. Look, I mean, first of all, I mean just a couple of rights. One is as you, well, actually in 1998, the IRS came out with the, what they call the taxpayer bill of rights. And they came out with various rights, taxpayer hat because of abuses that had gone on in the, in the examination process. In other words, in other places in the IRS, there's the right to understand what the examination is about. There's a right to be, to have a representative represent you in it. There's a right, not to be interviewed by the IRS. One of the questions I always get from clients is do I have to talk to the IRS? I mean, they, they really do not want to talk. And the answer is, no, you don't have to. Generally I can stand. I stand between you or your CPA stands between you and the IRS.

Joel Crouch (16m 52s):
And they're the person they're on, on your behalf. They're there to represent you. They're there to be the

person who communicates with the IRS. There are some exceptions to that. One of which is if the representative doesn't can't answer the questions like what's the client's business about. They'll go, they'll try to get around your power of attorney at that point. But, but that's probably the most important one is, is that there's the right to have a representative there on your behalf. So you don't have to communicate with the IRS. What I always tell my clients is, look you go, you're good at what you do. You're you have a great business. You know what you're doing in your business? I couldn't tell you how in the world to run your business, you go run your business, leave this to me and I'll come tell you what we need to deal with issues, but let me do it or let your CPA do it, whoever, but make sure they're doing it properly and let them go so that the rights are there, the right to have it examined on, it can be any time.

Joel Crouch (17m 47s):
There's a right to present information. And, and to tell your side, those kinds of things. So th but, but the examiner will come in and their way of getting people to do things is try to intimidate them. And most people are very intimidated by the IRS. And so you, you understand why they do it. It's just having somebody there on your behalf, whether it's your CPA or tax professional is, is very, very important, I think.

Tom Bronson (18m 15s):
Yeah. Yeah. You don't want them to make a decision in a vacuum for sure. One last question before we take a quick break and that is, so you had already sort of touched on this before, but what happens if they get you go through the examination and they come out and they tell you, you know, here are your charges. Here are your penalties, blah, blah, blah, blah, blah. And you don't agree with what the examiner is proposing. What happens then?

Joel Crouch (18m 42s):
Well, there's a couple of options. One is in the traditional way of doing it is there's, there's some, there's a division of the IRS called the IRS appeals division. They are the next level up. That gives you an opportunity to go deal with somebody. Who's going to look, take a fresh look at it. And, and I always tell clients, the higher you go in the IRS, the more discretion people exam, it's a black and white world. As you move up, the gray moves into it. They're also looking at what the risks are. Are they going to lose this issue? If they were to go try it, they're gonna look at all those kinds of things. So you go to, you can, if you, if there are issues of what's called a 30 day letter, which says, this is what we believe the examiner does. You then have a right to file a protest that goes to the appeals officer.

Joel Crouch (19m 23s):
You have 30 days to file that that can be extended for another third day. Generally extend it for another 30 days. If you need it. There is an exception to that is right now, the IRS appeals division requires getting back to our discussion before requires to be at least a year on the statute of limitations before they will accept a case and appeals. And so one of the questions you may get, and this is where somebody may want to extend, and I've, I've extended under these circumstances. I have extended the stats on the station so that

appeals can take a look at my case. Now, there are some other options. If you don't want to extend statute of limitations, the Irish will then issue. What's called a 90 day letter or notice of deficiency.

Joel Crouch (20m 3s):
That means you have 90 days to file a petition. In us tax court tax court sits in Washington. It's where all the judges are and you petition the tax court. And your case is then assigned to a tax court. Judge, the judges travel the country, w they're here in Dallas, three or four times a year. One judge will be here three or four times a year. And they'll be here for a two week time period, which they try cases. At that point. It's tried. It is a prepayment form, which means you don't have to pay, get paid $60 filing fee, but you don't have to pay the tax or anything associated with it until that case is resolved. Now, the good thing about that is one kind of side note, and this is what the examiners don't ever understand is you file a tax court petition.

Joel Crouch (20m 47s):
Once the government files their answer, the case is then actually sent back to the IRS appeals office I was talking about. So that's another way to get to appeals. And that may be a reason you don't want to fall extended because it kind of pushes the case and gets it where you want it to go quicker. That way the other option is, is a payment for it. You pay the tax, you paid the liability, you file a claim for refund. When the IRS denies it, you file an action in federal district court or court of federal claims. Most of the vast majority of my cases are going to end up at tax court because nobody wants to pay before they had to get it decided. So that's where you're going to end up being. Most of your case are going to end up

Tom Bronson (21m 28s):
Authority. And as we're sitting here and I'm listening to your, to your response to this, my brain is just coursing through all of the different tax issues that I've had as a business owner, but we'll get into some of that stuff in just a second. If we're talking with Joel crouch, let's take a quick break. We'll be back in 30 seconds.

Announcer (21m 48s):
Every business will eventually transition some internet employees and managers, and some externally to third party buyers, mastery partners, equips business owners to maximize business value so they can transition their businesses on their terms. Using our four step process. We start with a snapshot of where your business is today. Then we help you understand the way you want to be and design a custom strategy to get you there. Next, we help you execute that strategy with the assistance of our amazing resource network. And ultimately you'll be able to transition your business on your terms. What are you waiting for more time, more revenue, if you want to maximize your business value, it takes time.

Announcer (22m 29s):
Now is that time get started today by checking us out at www.masterypartners.comoremailusatinfoatmasterypartners.com.

Tom Bronson (22m 41s):
We're back with Joel crouch tax partner at Meadows Collier, and we're talking about tax issues. And before the break, we were talking a lot about IRS types of things. Well, let's talk about some other tax issues that are fairly common, I think, in, in businesses as well. So I hear this all the time. I've got employees, some of them are independent contractors. Should I be worried about an IRS employment tax examination? We all know about income tax examinations. What about employment tax examination? Yeah,

Joel Crouch (23m 18s):
The answers. I mean, we see it come up now. Generally it comes up in a, in not independently. It comes up as part of the examination of the business. They'll look into the employment taxes. Also. It can come up independently. If the, if you've got somebody who you've been treating as an, as an independent contractor and they file what's called a form SSA, but the IRS essentially says, no, they should have been classifying me as an employee. And they should have been paying their portion instead of me of payroll taxes. Instead of me paying both sides of it, you can see it come up in those circumstances, the other place. And what I've always tell this is when you get to independent contractors, it's a, it's a tough issue.

Joel Crouch (24m 3s):
Sometimes you gotta be very business owners. When they have people who are employees and independent contractors, you gotta be very careful because if, if you have the same people, if you have people doing the same work, some people as employees and some people's independent contractors, you're going to lose that issue with the IRS. If they're doing the exact same thing. Now, if you have now, and I've seen situations where people have had a person who they're treating partially as an employee and partially as independent contractor, you're going to lose that also their W2's for some reason, for some parts and 10 90 nines for others, the issue on independent contractors always is control.

Joel Crouch (24m 44s):
Are you as the business owner controlling how the work is done and when it's done and that's, and that's a simplified version of it, but that's essentially what it is. It's the control factor. There are things that I've done for my clients over the years to try to help them put in a position. If they're going to have independent contractors, which many industries, that's what they have. And that's just the way that they're treated is to put them in a better position, to be able to defend that. For example, if you have somebody who's an independent contractor, it's rampant within the, within the construction industry, that's just the way it works. And I always say, look, you're going to have somebody it's an infinite contractor, have them set up their own business so that they are, they are, they are, you're paying their business.

Joel Crouch (25m 29s):
Those kinds of things. They're hiring. Other people work for them. It doesn't work every time, but just be aware. But independent contractors is a, it can be a very sticky situation. There are ways if somebody really

thinks they have a problem to approach the IRS on it, there's a voluntary settlement program. Some other things that can lessen that, the potential impact that you could see as a result of that.

Tom Bronson (25m 53s):
So if you've got independent contractors, I think it's probably fairly safe to say, at least before a transaction, you know, three to five years, even before a transaction. Cause by the way, whether the IRS comes out or whether the buyer says, oh, we think this is a problem, right? Yeah.

Joel Crouch (26m 12s):
The other place that comes up is they're sharing agreements between the states and the feds on this. And so if you get contacted by one, you're probably going to get contacted by the other two.

Tom Bronson (26m 22s):
Right, right,

Joel Crouch (26m 23s):
Right. You're right. The buyer is probably going to take a look at that and go, I don't want to buy into that problem. And you got to go clean that up before we're going to do anything else.

Tom Bronson (26m 32s):
Yeah. I always advise our clients that have, that have contractors at least have a conversation with someone like Joel to say, to confirm or deny or not you're meeting all of the requirements for that person to be a contractor before you.

Joel Crouch (26m 50s):
Yeah. And let me tell you that the one key to this, because this is where it fails, where we have the biggest problem. You've got to issue 10 forms, 10 99 to these people. You just have to, if you do not do that, most of the is lost at that point. If I can go, if the IRS looks at the examination, the first thing they're gonna say is, are you wishing 10 99? If you issue a 10 99, you're going to go in this category over here. We're going to have less problems. If you're not issuing 10 90 nines, you got a bigger problem.

Tom Bronson (27m 20s):
Oh right. Yeah, yeah, yeah. Yeah. I hadn't thought about that. Yeah. If, if you're issuing 10 90 nines, then theoretically, the IRS is getting their money. It might not be the appropriate way.

Joel Crouch (27m 32s):
What you're doing. You're doing what you're supposed to. You're reporting it, all those kinds of things. And as long as you're doing that, you're acting in good faith. I think you're going to be okay. You may get a reclassified, but the, the, the pain of getting a reclassify, it's not going to be as much as if Nope, 10 90 nines.

Tom Bronson (27m 47s):
No doubt. No doubt. So you know, another issue that comes up frequently, as many business owners kind of routinely overstate their expenses. I know we touched on this in the first test. I know it's shocking, isn't it? So, and then suddenly when it's time to sell, they want to resolve this at any potential tax issues. Now, should they really go back and amend their returns? Or is, are there other options?

Joel Crouch (28m 16s):
Well, there's some other options for those. Let's talk about let's, let's say they were going to amend and that's not, that may not be the wrong idea. You only want to amend those. And what you think the statute of limitations is still up. So when we're talking about three years, maybe you don't go on beyond the three years, depending on your circumstances of his expenses. You're probably not going to go beyond three years. And so you can amend three years. The question comes down to this. The question is because there's some other alternatives and the other alternatives, they are says a voluntary disclosure program that voluntary schools or program is really, if you look at it as only for people who have criminal exposure, let's assume our clients here don't have criminal exposure, but what, let, let me back up.

Joel Crouch (28m 59s):
Let's assume they do have criminal exposure. Then you're going to go back. And you're probably going to mend six years worth of tax returns because in criminal cases, it's a six year statute of limitations. Now, the difference is, is now you're going to be looking at a 75% civil fraud penalty on the highest year in which you owe additional tax. So it's going to, that's going to impact, I've had more clients. I used to have lots of clients that did voluntary disclosures because it was just cleaner. You could get them in and out. You knew that this thing was done. You had an end to it by filing, just filing amended returns. It's not as clean. You don't have this determination immediately, but there are, there are good and bad to doing voluntary sculpture.

Joel Crouch (29m 40s):
One 70% fraud penalty, too. It takes a long time. It takes longer than you would think to get it resolved with the IRS. And if your client is looking at selling their business in the next year, I tell people these types, these days of voluntary disclosure program takes too long for that.

Tom Bronson (29m 59s):
Okay. And so, but it's a voluntary disclosure only when you've got criminal exposure.

Joel Crouch (30m 5s):
That's exactly right.

Tom Bronson (30m 6s):
And so now just for our layperson's ears, that means that there's potentially some fraud, right?

Joel Crouch (30m 13s):
You intentionally did these things with the attempt to frauding the IRS in some way,

Tom Bronson (30m 19s):
You know, technically couldn't they make the argument that that's always the case. Right? Right.

Joel Crouch (30m 27s):
Yeah. I mean, look it, look, it's there there's levels of fraud though, Tom, you know, there's certain left of these kinds of things is they are looking to make an example of somebody who is just paying a few expenses here and there that could be classified as personal versus versus business where you really see the PR where you're, it's really not the expense side that you see the voluntary disclosures on. It's really on the income side. If you're under reporting your income. Cause that's really where the issue arises. And that's where you have to be very careful with those things.

Tom Bronson (31m 0s):
People actually under-report their income.

Joel Crouch (31m 2s):
I know, I know. You're shocked to hear that. I know you're very shocked. I mean, people W2's that have under, under reported their income, how they ever did that. It makes no sense at all, but it's happening.

Tom Bronson (31m 16s):
You crazy things. Right. Okay. So another area which I know is not really your area of expertise, but we talked about it a little bit on the break and I want to bring it up here is a sales tax. Right? Cause there are a lot of, there's a lot of businesses that are, that seem to always be under the assumption that they don't have to charge sales tax. Right. And, and it does it really pay when should someone go back and look, maybe they, when they set up their business, they say, oh yeah, no, you don't have to pay sales tax on this. So you never charge, you never set up a sales tax collection device. When should you be thinking about, well, gee, I should ask the question. Should I be charging sales tax?

Joel Crouch (31m 57s):
Yeah. Yeah. Well, well they should. I mean, to me, you should be asking it from the very beginning. The problem I have seen clients run into is circumstances where let's say they are selling their business. Somebody starts looking at the books and records and realizes yeah, you've been paying sales tax in Texas, but you've been conducting business in other jurisdictions. And frankly you probably needed to be paying sales tax in those jurisdictions too. And we need to clean that up. And then the question is, how do you do it? Like once again, there's another voluntary disclosure initiatives out there. So the Texas has one, the other, other jurisdictions have them also. But it's one of those things that, that you see, you don't see it unless

you're looking for it when you're doing your due diligence.

Joel Crouch (32m 43s):
And then people then arises at that point. I've also seen circumstances. These are the extreme where people have been collecting, but not remitting it to the state. They've been collecting sales tax, but not remitting it to the IRS or to the, to the state of Texas or my most recent one was we weren't collecting it. But we would give a discount of the sales of the amount of the sales tax, if you would pay in cash so that there was never any sale tax charged and as a result. So that was the discount and everybody knew it to clear by their work in the business. If I can tell you all sorts of schemes out there that at the end of the day you go, why in the world did I do this?

Tom Bronson (33m 23s):
Wow. Especially if you want to a business that is ultimately transferrable. Yes. You know, I had, I had years ago I owned a software company that did software for restaurants, retailers, and wineries. And I had a client who, who knew that I was in the M and a space that I had bought and sold a lot of companies. And I was approached by this client of ours that said, Hey, we want to sell our business in two or three years. And so would you do a little consulting with us? And when I came to find out was that they were paying a lot of people, cash. They were, you know, of course in their restaurant and in their bars, they had a lot of cash transactions.

Tom Bronson (34m 6s):
They were siphoning all of that cash out of it. They were, you know, and, and you know, clearly it sounded like that this was a case that, oh, good Lord. You know it, by the way I tell them your business is not sellable for the value that you should be able to get for it because no, one's going to believe all these cash transactions. No one is gonna understand this. And, and so my advice to you is if you want to sell them, the next say three to five years is that you make a concerted effort over the next three years to make your business significantly more profitable, pay the taxes on that. Because an auditable dollar we'll give you 10 times or more.

Tom Bronson (34m 50s):
What an unauditable dollar we'll give you w you know, what do you, what do you, what would be your advice to somebody who clearly recognizes that they've been operating sort of outside the law on, on those things, but they do want to clean it up now, should they just come clean for a couple of years? Or should they slowly it on? My concern would be that if they came clean all at once, well, that's going to trigger audits in the past.

Joel Crouch (35m 18s):
Okay. So let's take your example. I've had example, same thing, restaurant industry. I had the same, same exact story, which is they had been scamming the cash. You got two different cash registers. You got credit cards, go in here, you got cash. It goes on here. The credit card shows up on the returns, a little bit of cash

to us, but most of the cash is all skimped. Probably my case was the IRS. I always tell people if you're going to do a cash scam, don't tell your employees about your doing your cash scam, because you've now created a lifetime employment for that person. And sure enough, in my case, they actually fired the manager who knew all about it, who then turned around and went to the IRS. And the next thing that happened was the Irish showed up and did a search on the house at that point.

Joel Crouch (36m 0s):
So that, that turned into a nasty little criminal case at that, at that point. So what do you tell if somebody came to me, if that client had come to me before all this happened, I would have said to them, okay, you are a classic voluntary disclosure. You have criminal prompts. You clearly have criminal conduct. Here. You are skimming the cash, which is not unusual and cash, heavy businesses. It happens. And I would say, you're going to have to do a voluntary disclosure and clean it all up, going back. Because if you want to make it work because you want to sell your business in the future, you need to show that you've cleaned up all problems, just falling an amended return.

Joel Crouch (36m 40s):
Doesn't give anybody the insurance. This is going away. The voluntary disclosure program actually brings an end to it says, okay, we agree with the IRS, IRS and us. We owe this. We pay it. That closes out all years, all years, even beyond the six years, I had a client one time who had been running a scam for 15 years, he was thrilled when we'd limited to six years, because he figured out he'd made more money than he was having to pay the IRS by the scam. One of my favorite clients, he just, he was very happy with the fact that we're able to solve that problem because he ran numbers and knew he'd come out ahead somehow. But I would clean up. I mean, I just, I think you've got to clean it up. If you're, especially, if you're gonna try to sell your business, you got to clean those things up. Otherwise you're somebody hanging out there on that.

Joel Crouch (37m 22s):
And it's not a grip position to the end.

Tom Bronson (37m 25s):
No doubt. No doubt. So we here at mastery, you know, we typically start working with our clients three to five years in advance of exiting the business. Are there things that business owners should be thinking about to reduce tax liability long before they exit?

Joel Crouch (37m 42s):
Yeah. And the number one thing in my list? Oh, well, there's two things. The first thing in the number one list is if the client is a C corporation, they really need to think about converting to an S-corporation my career. When I started 34 years ago, we didn't do C corporations for anybody. C corporations were out the high, high rates, all those kinds of things. And the last, you know, since 2000, 2017 act C corporations have come back around because there's 21% tax rate, but really I'm not a big fan of the C corporation. And the, and the thing

you gotta do, you gotta put time. If you're going to, if you're a C corporation and convert to an S you gotta put some time on the books, you gotta have gotta get five years.

Joel Crouch (38m 24s):
You gotta get rid of that. Built-in gain that you're going to have, if you don't. So you've got it. This is not a question. When they come to you Tom, and say, Hey, you got a buyer on the hook. I'm going to sell six. I need to convert from it from a C corporation to an S corporation. It's too late. At that point, you're just gonna have to deal with the higher taxes. You're gonna have to pay as a result of that and be careful of something that we, you're not talking about. The break, which is the Midco transaction. Be careful. There's a bunch of people, some junk out there. So if you hear something about Midco transaction run as fast as you can away from it.

Tom Bronson (38m 58s):
Yeah. Midco look and be on the lookout for my

Joel Crouch (39m 0s):
DCO. It's bad. It's bad.

Tom Bronson (39m 3s):
Yeah. So, which is by the way, a transaction that claims right. That, that they can solve this tax issue.

Joel Crouch (39m 11s):
Yeah. They claimed they can solve this and it doesn't solve the issue. I guess the other thing is, is the thing that we see a lot of, we still, it's just what we talked about. Sales tax. We see it, that people started doing due diligence and they realize, Hey, you're conducting business in all these other states now, especially how everybody's conducted business over the internet and those kinds of things. And so cleaning that up is really important too. I think those are the two things as corporations. I think it's the, the conversion from a C to an S is always the number one issue. I can't tell you how many phone calls I've gotten from, from CPAs. My client is about to sell their a C corporation. How do we deal with the fact they got, they got double tax and how do we get out of this into an S corporation?

Joel Crouch (39m 51s):
And I say, you're going to get five years. Nope. Well, not a whole lot. We can do at that point then.

Tom Bronson (39m 56s):
Yeah. Now, is that an actual, a law on the books that there's a five-year lookback period. Yeah.

Joel Crouch (40m 2s):
And this is called, it's called the built-in gains rule. There it is. It's a five-year. I mean, you've got to get out

five years.

Tom Bronson (40m 7s):
Okay. So you basically hold the business for five years and then, and then you're in the clear,

Joel Crouch (40m 12s):
So it's doing it now, if you're talking to them now about their business, that'd be number one on my list. You guys, a C Corp get out of being a C Corp.

Tom Bronson (40m 21s):
And I, and I advise clients. You have the hardest thing in the world though. Joel is business owners will say that they want to sell their business in three to five years. But on the average, they'll say that for, you know, 17 years before they start taking action on it. But if they would take action on it, the first time they think of it, oh, gee, I was established as a C court back in 1979 by my dad. I, I should convert that now. And then I don't have to worry about it in the longterm, but then they, they don't think about those things until it's too late. And that's, that is always a frustration for guys like you. And for guys like me, that if you just, if we'd have had this conversation five years ago, you wouldn't be in this situation

Joel Crouch (41m 5s):
Or the other there. The other side is you say to you, you say to this client, you say, well, what are you thinking about selling, oh, I'm not selling for another 10, 15 years. I'll deal with that later on we'll we've got plenty of time. And then they get an offer that they go, God, I can't turn this thing down. This is way too much money. And it's too light. And so just being proactive on those kinds of things, I think is really, really important.

Tom Bronson (41m 25s):
Yup. So, so also now the taxation at sort of a transaction, you know, there's something that has to happen that a lot of sellers don't realize until they're, the moment is upon them. And that is the allocation of proceeds in an asset sale. Right. And it could have a significant tax impact. So, so what does that mean when you allocate the proceeds?

Joel Crouch (41m 53s):
Well, okay, so you're getting proceeds from the sale. Let's, let's just use an easy example. We're getting a million dollars, let's say depending what you're selling, if it's an asset sale, I mean, it's a stock sale. It's easy. I mean, that's, you're not doing any kind of allocation there generally, but if you're selling assets, you're trying to allocate what the proceeds were to what assets you're selling. For example, many of your clients, like many of Mike's clients, there's going to be a Goodwill element to that and how you value that Goodwill elements going to be important because depending on what kind of assets you're selling, they're going to be subject to different tax rates. Some of the capital gains rates, I'm going to be ordinary income. So, you know,

you you're at you're signing how you're going to allocate that million dollars amongst those so that your gain is taxed at a certain amount.

Joel Crouch (42m 40s):
Most of us want to put as much as possible, probably Goodwill, frankly. And so there's always the question of how much, how do you value things like that? That's that you, sometimes we bring in, depending on size of the transaction, we bring in somebody who's a valuation expert to help us do that. The difficulty becomes trying to negotiate with the buyer on that because they may want them allocated in a different way because the tax benefits to them are, are a different way. Because if you can come to an agreement, the IRS believes and will not challenge an allocation. If there's really a third party, you know, an arms length negotiation of that, ours is going to recognize that. And so that negotiation that goes on, I think is very, very important.

Tom Bronson (43m 22s):
I, I agree with you. You know, I had a fortunate situation. I was signing a company that was supposed to sell in kinda middle to late 2017, but we pushed the transaction into it. It kept getting delayed, by the way, if you're a seller, this is what happens. That just the can keeps getting kicked further down the street. But we wound up not closing this transaction until toward the end of February, 2018. And a wonderful thing happened in between there, right, was the tax act of 2017 and December, 2017, the company that was acquiring us, we were unfortunately a C Corp.

Tom Bronson (44m 6s):
We made a mistake and that forced us into being a C Corp. We took a non-qualifying shareholder and, and it was too late at that point. And so we had, we realized within a reasonable amount of time, we're going to fix it anyway, circumstances, you know, in here. So somebody who knows what they're doing, you know, screws it up. I like that. But so here we are on a asset sale.

Joel Crouch (44m 30s):
You, you, you, you, okay, go ahead. I'll let you finish that here.

Tom Bronson (44m 32s):
Yeah, here we are in an asset sale. And then the tax laws change, the buyer for us was Canadian. And for the first time in history, I think the corporate taxes became after the 2017 tax act, the corporate taxes became less in the U S than they were in Canada. And so the Canadian buyer flipped it into a stock purchase, which was wonderful for us,

Joel Crouch (44m 58s):
Unusual,

Tom Bronson (44m 59s):

Very, very unusual for us. And so, so we had the advantage of doing that and, but luck is not always going to be on the seller side.

Joel Crouch (45m 11s):
Yeah. You know what that reminds me of something I did. It's one of my partners does this all the time and he's getting a year end. He will look at the client every time and say, do you really want to close this before year end? If we push them to the next year, you don't know the tax until, and the next year. So there's always that element that goes, went to it also.

Tom Bronson (45m 28s):
Yeah. I know we had a saying in one of my companies, we bought 72 companies and our favorite closing day of the year was December 32nd.

4 (45m 42s):
Okay.

Tom Bronson (45m 43s):
So yeah, that, I don't know if you'd ever heard that before. Look, before we go here. What sets Meadows Collier apart from other tax and litigation firms in,

Joel Crouch (45m 55s):
You know, I think, I think what sets us apart primarily is the fact that we're just tax oriented. What we do. I mean, this is, this is really what we do. We, we look at any kind of transaction we look at, we're always looking at the tax implications associated with you kind of get a, kind of get a two for one with us. You get people who are, who are both like on the transactional side or both can do the transaction and can do the tax side of it also. And that's, I think that's the biggest benefit that we bring to the table is, is we, we don't bring a lot of professionals who are going to bring up a small team. We're going to come in and get it done and get it done quickly.

Tom Bronson (46m 30s):
And this is why so many business owners need that to have somebody that they can rely on to have these conversations far, far, far in advance, right? It is so much better to be ready if in case a transaction just shows up on your doorstep one day or in case some disaster happens, that's unexpected and enforces a sale. It's so much better to do all this planning in advance. And I think that the folks that Meadows Collier would be a great place to develop one of those relationships. One last business question before we go, this podcast is all about maximizing business value. Now you've worked with a lot of clients over many, many years, doing what you do, Joe, what is the one most important thing you recommend business owners do to build long-term sustainable value in their business?

Joel Crouch (47m 21s):

You know, and, and, and I tell us, every business owner is get a, and this, I want to say tax professional, but really the person they need to have, they need a really, really good sophisticated CPA. I mean, I, that that person is worth their weight in gold. They need a good CPA and knows what they're doing, and they need to be able to recognize when they outgrow their CPA. That's the other thing. And that's a hard thing, and you have to have a discussion with them about that, but I good. A good CPA will keep the client out of trouble and we'll set the client up on, I think, a really good path to be able to position that they can maximize the value, make them, make them not do the, make them avoid the problems you and I talked about already, which is trying to clean up problems.

Joel Crouch (48m 7s):

A good CPA can help on those things. And then, you know, when you're getting near the sale, or are you thinking about it? Good to get some good professional advice on the tax side from a good attorney tax attorney on it also. But I, my number one is really the CPA. I think the CPA is the most important person.

Tom Bronson (48m 23s):

I agree. And most people don't realize that I've said this a thousand times on my podcast and my book, in fact, my new book, which is about to come out, I talk about selecting the right CPA, that those initials behind someone's name doesn't mean you have the right person, right? And so CPAs are cut from different cloth. And, and it is so important for business owners to have somebody who's got some transactional experience, especially when it comes time to sell in the business. Perhaps this guy has been a, this, the CPA has been great for your taxes and all that, but if they have no experience in transactions, you're going to probably want to get a different set of eyes on it.

Joel Crouch (49m 7s):

I think along those same lines is you, you know, some CPAs, all they do is take your information and put it on tax return. They never go and look behind the numbers. They never sit down with you and say, okay, tell me what's going on in your business. Let's think about how we're doing this. Those are the kinds of CPAs I'm talking about. And especially as you know, you and I have clients who have grown the business from the ground up to a really very successful business. Along that way, the person they have there at the beginning, it's probably somebody good for them. And hopefully that person comes to visit us. And I know many CPAs when they're, when the client gets a certain point, they go, okay, you need somebody new. It's hard to do, but a lot of them, and that's, that's the perfect CPA who says, okay, you need somebody better than me.

Tom Bronson (49m 51s):

The ones that are dangerous are the ones that know that and then deny it. Yeah.

Joel Crouch (49m 57s):

But like I say, and knock you sight, see a good CPA is worth their weight in gold five times.

Tom Bronson (50m 2s):

I remember one, one of my first CPAs he's long since passed away. Jim Hodges in, in Charlotte, North Carolina, he calls me one day. I was, I don't know, two or three years into, to one of my first businesses. And, and he said, he called me up and he said, what are you doing for lunch? I said, why do you ask? He said, because you're coming to meet me and I'm because you can't afford it. And he proceeded to dressed me down for that hour and a half of lunch. And it had a major impact on the future of my business.

Joel Crouch (50m 43s):

That is, that person is a proactive CPA, which is not their nature. That's not their nature. I worked with so many over the years that that's not what they do, but a proactive CPA is tremendous.

Tom Bronson (50m 57s):

Yes. And you want, so you want somebody who's going to be a surrogate CFO for you.

Joel Crouch (51m 3s):

Yeah. That's exactly what you want. Yeah,

Tom Bronson (51m 5s):

Exactly. All right. Well, I have to, you can't get away unscathed. I have to ask the bonus question. Joel, what personality trait has gotten you into the most trouble through the years?

Joel Crouch (51m 15s):

You mean in my practice or just generally

Tom Bronson (51m 18s):

Either? Or take your pick?

Joel Crouch (51m 20s):

No, I think, I think that the ones that got me in trouble in my practice and I've gotten away from this now, luckily I guess I learned my lesson was I sometimes I would push too hard on the IRS to the point where I had a good settlement and I kept trying to make it better. And there really was no better to get and it's caused problems and the clients got mad at me, but I've, you know, I've fixed that problem, but sometimes you just see the, the, the thing, the snowball rolling down the hill and you're thinking, Hey, we can jump on and get some more, we can get jumped on and get some more. So sometimes there is no more to get. And sometimes that got, that got me in trouble a few times, my early in my career,

Tom Bronson (51m 54s):

You know, in sales, you know what we call that, buying it back once you've made the sale, don't buy it back.

Joel Crouch (52m 3s):
I like that. I like that.

Tom Bronson (52m 5s):
So, so how can our viewers and listeners get in touch with you?

Joel Crouch (52m 9s):
Well, they can always get in touch with you by email J crouch at Meadows, collier.com. You can also call me my I'll give you my direct dial number. It's 2 1 4 7 4 9 2 4 5 6. Happy to answer any kind of questions I can. And I really enjoyed being here today, by the way. This is great.

Tom Bronson (52m 26s):
Hey, thanks for being our guests and sharing your wisdom and knowledge. I feel like we really only touched the tip of the iceberg here. You're going to have to come back again soon. Thanks for

Joel Crouch (52m 36s):
This. This is fun. This is really fun.

Tom Bronson (52m 39s):
Awesome. You can find Joel crouch at Meadows, call your.com or on LinkedIn. And of course you can always reach out to me and I'll be happy to make a warm introduction to my good friend. This is the maximize business value podcast, where we give practical advice to business owners on how to build long-term sustainable value in your business. Be sure to tune in each week and follow us wherever you found this podcast. And give us a comment or a suggestion for a future podcast. And we'd love for you to subscribe to our maximize business value podcast channel on YouTube, where you'll not only find every episode of our podcast, but you'll also find hundreds of other videos and free content to help you maximize your value.

Tom Bronson (53m 26s):
So until next time, I'm Tom Bronson, reminding you to think about the tax consequences while you maximize the business value.

Announcer (53m 38s):
If you're tuning into the maximize business value podcast with Tom Brunson, this podcast is brought to you by mastery partners, where our mission is to equip business owners to maximize business value so they can transition on their terms on how to build long-term sustainable business value and get free value building tools by visiting our website, www.masterypartners.com that's master with a Y mastery partners.com. Check it out.

Tom Bronson (54m 23s):

That was perfect. I wouldn't make any changes.