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McKELVEY v. McKEEVER ET AL, 33 AFTR 2d 74-1272, (DC-AZ), 01/23/1974


American Federal Tax Reports

## McKELVEY v. McKEEVER ET AL, Cite as 33 AFTR 2d 74-1272, (DC-AZ), 01/23/1974

Ronald McKELVEY, PETITIONER v. Robert M. McKEEVER, District Director, Internal Revenue Service, ET AL, RESPONDENTS.

### Case Information:

[pg. 74-1272]

<b>Code Sec(s):</b>	
<b>Court Name:</b>	U.S. District Court, Dist. of Arizona,
<b>Docket No.:</b>	Civil Action No. 73-607 Phx WEC,
<b>Date Decided:</b>	01/23/1974
<b>Disposition:</b>	Decision for taxpayer.
<b>Related Proceedings:</b>	Related case at  33 AFTR 2d 74-1271.
<b>Cites:</b>	33 AFTR 2d 74-1272, 74-1 USTC P 9410.

### HEADNOTE

**1. CRIMES—Evasion and failure to pay tax or file return—evidence obtained by illegal means.** Govt. permanently restrained from proceeding with investigation of taxpayer's affairs and from using previously obtained evidence against him directly or indirectly. Further, Govt. ordered to return specified materials. Govt. failed to respond to taxpayer's motion to make temporary restraining order into permanent injunction. Taxpayer had alleged evidence had been illegally obtained.

*Reference(s):* 1974 P-H Fed. ¶38,506.

## OPINION

**Stephen E. Silver**, 2333 N. Central Ave., Phoenix, Ariz., Atty. for Petitioner.

William C. Smitherman, U.S. Atty., John F. Flynn, Asst. U.S. Atty., Phoenix, Ariz., for Respondents.

**Judge:** CRAIG, District Judge:

## Judgment and Permanent Injunction

[1] This matter having come on for hearing before the Court on January 21, 1974, on petitioner's Motion Requesting That Judgment By Default Be Entered Against Respondents, Making Permanent the Temporary Restraining Order Entered Herein and Granting the Prayer for Relief Set Forth in the Petition; and respondents having failed to file a written response, or brief, or memorandum of points and authorities in opposition thereto, and the respondents' failure to file a written response, or brief or memorandum of points and authorities in opposition to the motion of petitioner, constituting a consent on the part of the respondents to the granting of this Motion pursuant to Rule 11(g) of the Rules of Practice of the United States District Court for the District of Arizona; and the Court having further considered the Memorandum of Points and Authorities filed by petitioner and the oral arguments presented by the parties hereto; and the Court being fully advised in the premises and being of the opinion that no just cause exists for delay in entering Judgment and Permanent Injunction;

It Is Hereby Ordered, Adjudged and Decreed:

- (1.) That the respondents be permanently enjoined from proceeding with their investigation of petitioner's affairs, business and personal, for the year 1971;

- (2.) That the respondents return to petitioner, all copies, any and all extracts, including all evidence obtained directly or indirectly therefrom, taken from petitioner's books and records, that were obtained as a result of the unlawful search and seizure;
- (3.) That the respondents return to petitioner, [pg. 74-1273]all written evidence, including originals, copies and verbal evidence of petitioner, notes, memorandums, reproductions, extracts and summaries thereof, as well as any and all leads, information and any other evidence, written or verbal, obtained at any time, through the use or scrutiny of said unlawfully obtained evidence;
- (4.) That the respondents be permanently restrained and enjoined from directly and/or indirectly using in any manner against petitioner, all written evidence and all copies thereof, and all verbal evidence, all notes, memorandums and other reproductions and summaries thereof, relating to tax matters of petitioner for 1971, obtained by the respondents since August 22, 1973, as well as any and all leads, information and other evidence written or verbal, obtained from any person or any place at any time, directly or indirectly, from or through the use and/or scrutiny of the evidence referred to in paragraphs 2 and 3 hereof; and
- (5.) That the petitioner be granted his costs as allowed by law.

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