

Protesters Win a Case Over I.R.S.

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The federal government's campaign against income tax protesters suffered a major setback yesterday when a federal jury in Sacramento acquitted a former Internal Revenue Service investigator on charges of helping to prepare false tax returns.

The former investigator, Joseph R. Banister, 42, of San Jose, Calif., has become a hero to the tax protest movement, even though two of his clients are serving long prison sentences after following his advice.

Mr. Banister was acquitted on charges of conspiracy and helping to prepare three false tax returns for a small California manufacturer.

"Everything I have done in my entire career at the I.R.S. and after, I've done with integrity and honesty," Mr. Banister said after the verdict. "My clients wanted some answers to questions about what was required."

He added: "As a C.P.A., my duties are to my clients, to make sure they get the best results."

Mr. Banister resigned from the I.R.S. criminal investigation division in 1999 after he wrote a lengthy report asserting that no law requires the payment of taxes and that Americans were being tricked into paying them. The theories he has put forth have been uniformly rejected by the courts.

The I.R.S. declined to comment on the verdict. The prosecutor, Robert Twiss, said the verdict showed only that the jury did not believe the government had proved its case beyond a reasonable doubt.

The jury verdict appeared to reflect the different way criminal tax laws apply to taxpayers and to professional advisers who promote tax cheating, said Jay Adkisson, a tax lawyer in Laguna Niguel, Calif., who tracks tax protesters at the Web site [quatloos.com](#).

"It is hard to convict promoters," Mr. Adkisson said. "Promoters make a lot of money off their marks, watch their marks go to jail for not paying taxes and then take advantage of a loophole that lets them prepare bogus returns that they characterize as protest returns" prepared at the direction of the client.

Mr. Banister was not charged with any failure to pay taxes.

Defense lawyers said that as a certified public accountant, his only duty was to prepare a return that accurately reflected the tax positions of his clients and to disclose them to the I.R.S.

The defense relied heavily on the testimony of the government's main witness, Dennis Brown, a longtime I.R.S. agent, who said it was proper for people to file protest returns as way to get their tax questions answered. The defense said that was what Mr. Banister and his client, Walter Thompson, had done.

Mr. Thompson, who was convicted in January, is serving six years for failure to withhold and turn over taxes from paychecks of workers at his Cencal Aviation Products in Lake Shasta, Calif.

Both men were charged with conspiracy, but acquitted of that charge in separate trials.

Mr. Banister was charged with helping to prepare three false tax returns, which said that no withheld taxes were due, and seeking reimbursement of taxes already paid.

Mr. Banister was greeted by cheers from more than a dozen fellow tax protesters and family members as he emerged from the courtroom of Judge William B. Shubb of United States District Court in Sacramento after the four-day trial ended, according to accounts by people who were there.

Judge Shubb had bailiffs remove two women from the courtroom for outbursts as the four verdicts of not guilty were read.

The verdict stirred concerns that it would encourage more Americans to refuse to pay taxes, which the Treasury, I.R.S. and the Justice Department have all acknowledged is a growing problem. The problem has prompted a renewed effort to seek civil injunctions against promoters like Mr. Banister and in some cases prosecutions of both tax protesters and their professional advisers.

"This is going to encourage thousands more people who were on the fence, who were paying taxes only because they were afraid they would be criminally prosecuted," said J. J. MacNab, a Maryland insurance analyst. She is writing a book about people who deny the legitimacy of the tax laws and attended the trial, which began June 14.

"If too many people do this, the tax system will collapse because it is based on people voluntarily complying" with the law, Ms. MacNab said.

Mr. Banister's lawyer, Robert Bernhoft, said the verdict was a sign that other taxpayers need not be afraid of confronting the government.

He said the case did not set a precedent.

"It just means that Joe Banister is not guilty of misconduct," Mr. Bernhoft said. "But I hope it sends a message to policy makers in Washington that they need to re-evaluate their policies in these cases."

Mr. Bernhoft said that "American citizens have the right to ask the government questions and the government has a duty to answer in good faith."

He added that "to proceed against Joe Banister with an indictment rather than simply answering his questions is un-American."