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Department of Justice

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District of Idaho

FOR IMMEDIATE RELEASE

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Former Xpress Flex, Inc. And Payroll America, Inc. Owner Sentenced To 51 Months For Fraud And Filing A False Tax Return

Ordered to Pay Restitution of Nearly \$1 Million to Victims

BOISE – Michael Wayne Davis, II, 46, of Raleigh, North Carolina, formerly of Eagle, Idaho, was sentenced yesterday to 51 months in prison for wire fraud and filing a false tax return, U.S. Attorney Wendy J. Olson and Assistant Attorney General for the Justice Department's Tax Division Kathryn Keneally announced. Chief U.S. District Judge B. Lynn Winmill also ordered Davis to serve three years of supervised release following his prison term and pay \$999,930.90 in restitution – \$954,640.90 to Xpress Flex victims and \$45,290 to the IRS for the tax loss. Davis pleaded guilty to the charges on September 10, 2012.

According to court documents, in 2009 and 2010, Davis owned and operated Xpress Flex, Inc., a Boise, Idaho, company that administered, on behalf of employer-clients, flexible benefits plans for tax-free, qualified benefits, such as health care and dependent care. Pursuant to those plans, Xpress Flex received monetary contributions from its employer-clients of pre-tax withholdings from their employees' paychecks. These funds were deposited into Xpress Flex bank accounts and set aside to pay the claims of employee-participants when they came due. According to court documents, Davis misappropriated \$954,640.90 of Xpress Flex client funds and used them to pay personal credit card charges and the business expenses of his other company, Payroll America, Inc. He did so without the knowledge or authorization of the employer-clients and their employees, and contrary to representations in plan documents and contracts that he would safeguard the deposits and use them only to pay employee claims.

Court documents also showed that from 1994 through 2009, Davis owned and operated Payroll America in Boise, Idaho. Payroll America provided payroll administration and payroll tax filing services to its employer-clients. Pursuant to contract documents, employer-clients would deposit sufficient funds with Payroll America to meet their payroll and payroll tax obligations, which Payroll America would pay when they came due. According to court documents, in March and April of 2007, Davis misappropriated \$2 million of Payroll America employer-client funds, wired them into his E*Trade brokerage account, and then invested the funds in the stock market. Davis did so without the knowledge or authorization of the employer-clients of Payroll America, contrary to representations in contract documents that he would safeguard the funds and use them only to pay payroll and payroll taxes.

Davis' E*Trade investments generated approximately \$192,436 in capital gains income. According to court documents, Davis wired this money into his and his wife's personal checking account. The wire transfer was annotated "E-Trade Gains." However, Davis intentionally failed to report capital gains income from E*Trade investments on his 2007 or 2008 tax returns, causing a tax loss of \$45,290. For this conduct, Davis pleaded guilty to one count of filing a false tax return.

"I'm very pleased that my office, with the assistance of the Justice Department's Tax Division, and federal law enforcement partners were able to bring Mr. Davis to justice," said Olson. "Those who are entrusted to manage others' money must ensure that it is safe and available for its intended purpose, not diverted for personal gain."

"This sentencing sends a clear message, businesses owners who misuse their positions of trust and divert funds for their own personal use will be held accountable," said Lilia E. Ruiz, IRS Criminal Investigation Acting Special Agent in Charge for the State of Idaho.

The case was investigated by the Federal Bureau of Investigation, the U.S. Department of Labor, Employee Benefits Security Administration, and Internal Revenue Service-Criminal Investigation.

Today's announcement is part of efforts underway by President Obama's Financial Fraud Enforcement Task Force (FFETF) which was created in November 2009 to wage an aggressive, coordinated and proactive effort to investigate and prosecute financial crimes. With more than 20 federal agencies, 94 U.S. attorneys' offices and state and local partners, it's the broadest coalition of law enforcement, investigatory and regulatory agencies ever assembled to combat fraud. Since its formation, the task force has made great strides in facilitating increased investigation and prosecution of financial crimes; enhancing coordination and cooperation among federal, state and local authorities; addressing discrimination in the lending and financial markets and conducting outreach to the public, victims, financial institutions and other organizations. Over the past three fiscal years, the Justice Department has filed more than 10,000 financial fraud cases against nearly 15,000 defendants including more than 2,700 mortgage fraud defendants. For more information on the task force, visit www.stopfraud.gov.

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