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Return of Private Foundation
or Section 4947(a)(1) Trust Treated as Private Foundation

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2016

Open to Public Inspection

For calendar year 2016 or tax year beginning , 2016, and ending

Merrymac McKinley Foundation, Inc.
2311 Cedar Springs Rd. #350
Dallas, TX 75201

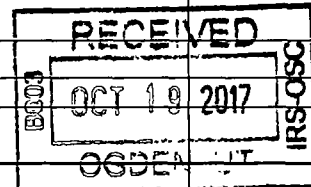
G Check all that apply: ☐ Initial return ☐ Initial return of a former public charity
☐ Final return ☐ Amended return
☐ Address change ☐ Name change

H Check type of organization: ☒ Section 501(c)(3) exempt private foundation
☐ Section 4947(a)(1) nonexempt charitable trust ☐ Other taxable private foundation

I Fair market value of all assets at end of year (from Part II, column (c), line 16) \$ 2,952,457.
J Accounting method: ☒ Cash ☐ Accrual
☐ Other (specify) (Part I, column (d) must be on cash basis.)

A Employer identification number 74-2457886
B Telephone number (see instructions) (214) 922-9033
C If exemption application is pending, check here ☐
D 1 Foreign organizations, check here ☐
2 Foreign organizations meeting the 85% test, check here and attach computation ☐
E If private foundation status was terminated under section 507(b)(1)(A), check here ☐
F If the foundation is in a 60-month termination under section 507(b)(1)(B), check here ☐

Part I Analysis of Revenue and Expenses (The total of amounts in columns (b), (c), and (d) may not necessarily equal the amounts in column (a) (see instructions))		(a) Revenue and expenses per books	(b) Net investment income	(c) Adjusted net income	(d) Disbursements for charitable purposes (cash basis only)
1	Contributions, gifts, grants, etc., received (attach schedule)				
2	Check <input checked="" type="checkbox"/> if the foundation is not required to attach Sch B				
3	Interest on savings and temporary cash investments	219.	219.	N/A	
4	Dividends and interest from securities	110,523.	110,523.		
5a	Gross rents				
b	Net rental income or (loss)				
6a	Net gain or (loss) from sale of assets not on line 10	-67,710.			
b	Gross sales price for all assets on line 6a 1,136,350.				
7	Capital gain net income (from Part IV, line 2)		0.		
8	Net short-term capital gain				
9	Income modifications				
10a	Gross sales less returns and allowances				
b	Less: Cost of goods sold				
c	Gross profit or (loss) (attach schedule)				
11	Other income (attach schedule)				
	See Statement 1	-21,759.	3,300.		
12	Total. Add lines 1 through 11	21,273.	114,042.		
13	Compensation of officers, directors, trustees, etc.	0.			
14	Other employee salaries and wages				
15	Pension plans, employee benefits				
16a	Legal fees (attach schedule) See St 2	2,131.			2,131.
b	Accounting fees (attach sch) See St 3	10,800.	5,400.		5,400.
c	Other professional fees (attach sch) See St 4	4,741.	4,741.		
17	Interest				
18	Taxes (attach schedule)(see instrs) See Stm 5	2,608.	748.		
19	Depreciation (attach schedule) and depletion				
20	Occupancy				
21	Travel, conferences, and meetings	736.			736.
22	Printing and publications				
23	Other expenses (attach schedule)				
	See Statement 6	5,878.	4,115.		1,704.
24	Total operating and administrative expenses. Add lines 13 through 23	26,894.	15,004.		9,971.
25	Contributions, gifts, grants paid Part XV	301,165.			292,665.
26	Total expenses and disbursements. Add lines 24 and 25	328,059.	15,004.		302,636.
27	Subtract line 26 from line 12:				
a	Excess of revenue over expenses and disbursements	-306,786.			
b	Net investment income (if negative, enter -0-)		99,038.		
c	Adjusted net income (if negative, enter -0-)				



950 6

Part II Balance Sheets		Beginning of year	End of year	
			(a) Book Value	(b) Book Value
ASSETS	1 Cash— non-interest-bearing	87,717.	70,789.	70,789.
	2 Savings and temporary cash investments	93,286.	262,200.	262,200.
	3 Accounts receivable 50.			
	Less: allowance for doubtful accounts 50.		50.	50.
	4 Pledges receivable			
	Less: allowance for doubtful accounts			
	5 Grants receivable			
	6 Receivables due from officers, directors, trustees, and other disqualified persons (attach schedule) (see instructions)			
	7 Other notes and loans receivable (attach sch)			
	Less: allowance for doubtful accounts			
	8 Inventories for sale or use			
	9 Prepaid expenses and deferred charges			
	10a Investments — U S and state government obligations (attach schedule)			
	b Investments — corporate stock (attach schedule) Statement 7	1,741,431.	1,596,722.	2,542,938.
	c Investments — corporate bonds (attach schedule) Statement 8	75,000.	75,000.	74,100.
	11 Investments — land, buildings, and equipment: basis			
LIABILITIES	Less: accumulated depreciation (attach schedule)			
	12 Investments — mortgage loans			
	13 Investments — other (attach schedule)	314,113.		
	14 Land, buildings, and equipment: basis			
	Less: accumulated depreciation (attach schedule)			
	15 Other assets (describe See Statement 9)	2,380.	2,380.	2,380.
	16 Total assets (to be completed by all filers — see the instructions. Also, see page 1, item I.)	2,313,927.	2,007,141.	2,952,457.
	17 Accounts payable and accrued expenses			
	18 Grants payable			
	19 Deferred revenue			
	20 Loans from officers, directors, trustees, & other disqualified persons			
	21 Mortgages and other notes payable (attach schedule)			
	22 Other liabilities (describe)			
	23 Total liabilities (add lines 17 through 22)	0.	0.	
NET ASSETS OR FUND BALANCES	Foundations that follow SFAS 117, check here and complete lines 24 through 26 and lines 30 and 31. <input type="checkbox"/>			
	24 Unrestricted			
	25 Temporarily restricted			
	26 Permanently restricted			
	Foundations that do not follow SFAS 117, check here and complete lines 27 through 31. <input checked="" type="checkbox"/>			
	27 Capital stock, trust principal, or current funds			
	28 Paid-in or capital surplus, or land, bldg., and equipment fund			
	29 Retained earnings, accumulated income, endowment, or other funds	2,313,927.	2,007,141.	
	30 Total net assets or fund balances (see instructions)	2,313,927.	2,007,141.	
	31 Total liabilities and net assets/fund balances (see instructions)	2,313,927.	2,007,141.	

Part III Analysis of Changes in Net Assets or Fund Balances

1 Total net assets or fund balances at beginning of year — Part II, column (a), line 30 (must agree with end-of-year figure reported on prior year's return)	1	2,313,927.
2 Enter amount from Part I, line 27a	2	-306,786.
3 Other increases not included in line 2 (itemize)	3	
4 Add lines 1, 2, and 3	4	2,007,141.
5 Decreases not included in line 2 (itemize)	5	
6 Total net assets or fund balances at end of year (line 4 minus line 5) — Part II, column (b), line 30	6	2,007,141.

Part IV Capital Gains and Losses for Tax on Investment Income

(a) List and describe the kind(s) of property sold (e.g., real estate, 2-story brick warehouse, or common stock, 200 shares MLC Company)	(b) How acquired P — Purchase D — Donation	(c) Date acquired (mo., day, yr.)	(d) Date sold (mo., day, yr.)
1 a publicly traded securities	P	Various	Various
b long-term capital gain dist.	P	Various	Various
c K-1 pass-through capital gains (losses)	P	Various	Various
d			
e			

(e) Gross sales price	(f) Depreciation allowed (or allowable)	(g) Cost or other basis plus expense of sale	(h) Gain or (loss) (e) plus (f) minus (g)
a 1,134,650.		1,204,060.	-69,410.
b 247.			247.
c 1,453.			1,453.
d			
e			

Complete only for assets showing gain in column (h) and owned by the foundation on 12/31/69

(i) F M V as of 12/31/69	(j) Adjusted basis as of 12/31/69	(k) Excess of col (i) over col (j), if any	(l) Gains (Col. (h) gain minus col (k), but not less than -0-) or Losses (from col. (h))
a			-69,410.
b			247.
c			1,453.
d			
e			

2 Capital gain net income or (net capital loss) If gain, also enter in Part I, line 7 If (loss), enter -0- in Part I, line 7	2	-67,710.
3 Net short-term capital gain or (loss) as defined in sections 1222(5) and (6). If gain, also enter in Part I, line 8, column (c) (see instructions) If (loss), enter -0- in Part I, line 8 	3	0.

Part V Qualification Under Section 4940(e) for Reduced Tax on Net Investment Income

(For optional use by domestic private foundations subject to the section 4940(a) tax on net investment income)

If section 4940(d)(2) applies, leave this part blank

Was the foundation liable for the section 4942 tax on the distributable amount of any year in the base period?

☐ Yes☒ No

If 'Yes,' the foundation does not qualify under section 4940(e). Do not complete this part

1 Enter the appropriate amount in each column for each year, see the instructions before making any entries

(a) Base period years Calendar year (or tax year beginning in)	(b) Adjusted qualifying distributions	(c) Net value of noncharitable-use assets	(d) Distribution ratio (col. (b) divided by col. (c))
2015	113,761.	2,203,554.	0.051626
2014	35,508.	1,628,917.	0.021799
2013	74,285.	1,570,872.	0.047289
2012	40,915.	1,414,840.	0.028918
2011	69,182.	1,357,055.	0.050980

2 Total of line 1, column (d)	2	0.200612
3 Average distribution ratio for the 5-year base period — divide the total on line 2 by 5, or by the number of years the foundation has been in existence if less than 5 years	3	0.040122
4 Enter the net value of noncharitable-use assets for 2016 from Part X, line 5	4	2,871,924.
5 Multiply line 4 by line 3	5	115,227.
6 Enter 1% of net investment income (1% of Part I, line 27b)	6	990.
7 Add lines 5 and 6	7	116,217.
8 Enter qualifying distributions from Part XII, line 4	8	302,636.

If line 8 is equal to or greater than line 7, check the box in Part VI, line 1b, and complete that part using a 1% tax rate. See the Part VI instructions

Part VI Excise Tax Based on Investment Income (Section 4940(a), 4940(b), 4940(e), or 4948 – see instructions)

1 a Exempt operating foundations described in section 4940(d)(2), check here <input type="checkbox"/> and enter 'N/A' on line 1. Date of ruling or determination letter: _____ (attach copy of letter if necessary – see instructions)			
b Domestic foundations that meet the section 4940(e) requirements in Part V, check here. <input checked="" type="checkbox"/> and enter 1% of Part I, line 27b		1	990.
c All other domestic foundations enter 2% of line 27b. Exempt foreign organizations enter 4% of Part I, line 12, col. (b)			
2 Tax under section 511 (domestic section 4947(a)(1) trusts and taxable foundations only. Others enter -0-)		2	0.
3 Add lines 1 and 2		3	990.
4 Subtitle A (income) tax (domestic section 4947(a)(1) trusts and taxable foundations only. Others enter -0-)		4	0.
5 Tax based on investment income. Subtract line 4 from line 3. If zero or less, enter -0-		5	990.
6 Credits/Payments			
a 2016 estimated tax pmts and 2015 overpayment credited to 2016	6 a		
b Exempt foreign organizations – tax withheld at source	6 b		
c Tax paid with application for extension of time to file (Form 8868)	6 c	1,000.	
d Backup withholding erroneously withheld	6 d		
7 Total credits and payments. Add lines 6a through 6d	7	1,000.	
8 Enter any penalty for underpayment of estimated tax. Check here <input type="checkbox"/> if Form 2220 is attached	8		
9 Tax due. If the total of lines 5 and 8 is more than line 7, enter amount owed	9	0.	
10 Overpayment. If line 7 is more than the total of lines 5 and 8, enter the amount overpaid	10	10.	
11 Enter the amount of line 10 to be: Credited to 2017 estimated tax <input checked="" type="checkbox"/> 10. Refunded <input type="checkbox"/>	11	0.	

Part VII-A Statements Regarding Activities

	Yes	No
1 a During the tax year, did the foundation attempt to influence any national, state, or local legislation or did it participate or intervene in any political campaign?		X
b Did it spend more than \$100 during the year (either directly or indirectly) for political purposes (see instructions for the definition)? <i>If the answer is 'Yes' to 1a or 1b, attach a detailed description of the activities and copies of any materials published or distributed by the foundation in connection with the activities</i>		X
c Did the foundation file Form 1120-POL for this year?		X
d Enter the amount (if any) of tax on political expenditures (section 4955) imposed during the year: (1) On the foundation <input checked="" type="checkbox"/> \$ 0. (2) On foundation managers <input checked="" type="checkbox"/> \$ 0.		
e Enter the reimbursement (if any) paid by the foundation during the year for political expenditure tax imposed on foundation managers <input checked="" type="checkbox"/> \$ 0.		
2 Has the foundation engaged in any activities that have not previously been reported to the IRS? <i>If 'Yes,' attach a detailed description of the activities</i>		X
3 Has the foundation made any changes, not previously reported to the IRS, in its governing instrument, articles of incorporation, or bylaws, or other similar instruments? <i>If 'Yes,' attach a conformed copy of the changes</i>		X
4 a Did the foundation have unrelated business gross income of \$1,000 or more during the year?		X
b If 'Yes,' has it filed a tax return on Form 990-T for this year?		N/A
5 Was there a liquidation, termination, dissolution, or substantial contraction during the year? <i>If 'Yes,' attach the statement required by General Instruction T.</i>		X
6 Are the requirements of section 508(e) (relating to sections 4941 through 4945) satisfied either: • By language in the governing instrument, or • By state legislation that effectively amends the governing instrument so that no mandatory directions that conflict with the state law remain in the governing instrument?	X	
7 Did the foundation have at least \$5,000 in assets at any time during the year? <i>If 'Yes,' complete Part II, col. (c), and Part XV</i>	X	
8 a Enter the states to which the foundation reports or with which it is registered (see instructions) NY		
b If the answer is 'Yes' to line 7, has the foundation furnished a copy of Form 990-PF to the Attorney General (or designate) of each state as required by General Instruction G? <i>If 'No,' attach explanation</i>	X	
9 Is the foundation claiming status as a private operating foundation within the meaning of section 4942(j)(3) or 4942(j)(5) for calendar year 2016 or the taxable year beginning in 2016 (see instructions for Part XIV)? <i>If 'Yes,' complete Part XIV</i>		X
10 Did any persons become substantial contributors during the tax year? <i>If 'Yes,' attach a schedule listing their names and addresses</i>		X

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Part VII-A Statements Regarding Activities (continued)

	Yes	No
11 At any time during the year, did the foundation, directly or indirectly, own a controlled entity within the meaning of section 512(b)(13)? If 'Yes,' attach schedule (see instructions)	11	X
12 Did the foundation make a distribution to a donor advised fund over which the foundation or a disqualified person had advisory privileges? If 'Yes,' attach statement (see instructions)	12	X
13 Did the foundation comply with the public inspection requirements for its annual returns and exemption application? Website address <u>N/A</u>	13	X
14 The books are in care of <u>Mark McKinley</u> Telephone no <u>(214) 922-9033</u> Located at <u>2311 Cedar Springs Rd., Suite 350 Dallas TX</u> ZIP + 4 <u>75201</u>		
15 Section 4947(a)(1) nonexempt charitable trusts filing Form 990-PF in lieu of Form 1041 - Check here <u>N/A</u> and enter the amount of tax-exempt interest received or accrued during the year <u>15</u> <u>N/A</u>		
16 At any time during calendar year 2016, did the foundation have an interest in or a signature or other authority over a bank, securities, or other financial account in a foreign country?	16	X
See the instructions for exceptions and filing requirements for FinCEN Form 114. If 'Yes,' enter the name of the foreign country <u></u>		

Part VII-B Statements Regarding Activities for Which Form 4720 May Be Required

File Form 4720 if any item is checked in the 'Yes' column, unless an exception applies.

	Yes	No
1a During the year did the foundation (either directly or indirectly):		
(1) Engage in the sale or exchange, or leasing of property with a disqualified person? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(2) Borrow money from, lend money to, or otherwise extend credit to (or accept it from) a disqualified person? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(3) Furnish goods, services, or facilities to (or accept them from) a disqualified person? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(4) Pay compensation to, or pay or reimburse the expenses of, a disqualified person? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
(5) Transfer any income or assets to a disqualified person (or make any of either available for the benefit or use of a disqualified person)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
(6) Agree to pay money or property to a government official? (Exception. Check 'No' if the foundation agreed to make a grant to or to employ the official for a period after termination of government service, if terminating within 90 days) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
b If any answer is 'Yes' to 1a(1)-(6), did any of the acts fail to qualify under the exceptions described in Regulations section 53.4941(d)-3 or in a current notice regarding disaster assistance (see instructions)? Organizations relying on a current notice regarding disaster assistance check here <input type="checkbox"/>	1b	X
c Did the foundation engage in a prior year in any of the acts described in 1a, other than excepted acts, that were not corrected before the first day of the tax year beginning in 2016?	1c	X
2 Taxes on failure to distribute income (section 4942) (does not apply for years the foundation was a private operating foundation defined in section 4942(j)(3) or 4942(j)(5)).		
a At the end of tax year 2016, did the foundation have any undistributed income (lines 6d and 6e, Part XIII) for tax year(s) beginning before 2016? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If 'Yes,' list the years <u>20 12 , 20 11 , 20 08 , 20 07 , 2006 , 2005</u>		
b Are there any years listed in 2a for which the foundation is not applying the provisions of section 4942(a)(2) (relating to incorrect valuation of assets) to the year's undistributed income? (If applying section 4942(a)(2) to all years listed, answer 'No' and attach statement - see instructions) <u>See Statement 10</u>	2b	X
c If the provisions of section 4942(a)(2) are being applied to any of the years listed in 2a, list the years here <u>20 12 , 20 11 , 20 08 , 20 07 , 2006 , 2005</u>		
3a Did the foundation hold more than a 2% direct or indirect interest in any business enterprise at any time during the year? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
b If 'Yes,' did it have excess business holdings in 2016 as a result of (1) any purchase by the foundation or disqualified persons after May 26, 1969, (2) the lapse of the 5-year period (or longer period approved by the Commissioner under section 4943(c)(7)) to dispose of holdings acquired by gift or bequest; or (3) the lapse of the 10-, 15-, or 20-year first phase holding period? (Use Schedule C, Form 4720, to determine if the foundation had excess business holdings in 2016)	3b	N/A
4a Did the foundation invest during the year any amount in a manner that would jeopardize its charitable purposes?	4a	X
b Did the foundation make any investment in a prior year (but after December 31, 1969) that could jeopardize its charitable purpose that had not been removed from jeopardy before the first day of the tax year beginning in 2016?	4b	X

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Part VII-B Statements Regarding Activities for Which Form 4720 May Be Required (continued)

5a During the year did the foundation pay or incur any amount to

(1) Carry on propaganda, or otherwise attempt to influence legislation (section 4945(e))?

☐ Yes ☒ No

(2) Influence the outcome of any specific public election (see section 4955), or to carry on, directly or indirectly, any voter registration drive?

☐ Yes ☒ No

(3) Provide a grant to an individual for travel, study, or other similar purposes?

☐ Yes ☒ No

(4) Provide a grant to an organization other than a charitable, etc., organization described in section 4945(d)(4)(A)? (see instructions)

☒ Yes ☐ No

(5) Provide for any purpose other than religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals?

☐ Yes ☒ No

b If any answer is 'Yes' to 5a(1)–(5), did any of the transactions fail to qualify under the exceptions described in Regulations section 53.4945 or in a current notice regarding disaster assistance (see instructions)?

5b

X

Organizations relying on a current notice regarding disaster assistance check here

☐

c If the answer is 'Yes' to question 5a(4), does the foundation claim exemption from the tax because it maintained expenditure responsibility for the grant?

☐ Yes ☒ No

If 'Yes,' attach the statement required by Regulations section 53.4945–5(d)

6a Did the foundation, during the year, receive any funds, directly or indirectly, to pay premiums on a personal benefit contract?

☐ Yes ☒ No

b Did the foundation, during the year, pay premiums, directly or indirectly, on a personal benefit contract?

6b

X

If 'Yes' to 6b, file Form 8870

7a At any time during the tax year, was the foundation a party to a prohibited tax shelter transaction?

☐ Yes ☒ No

b If 'Yes,' did the foundation receive any proceeds or have any net income attributable to the transaction?

N/A

7b

Part VIII Information About Officers, Directors, Trustees, Foundation Managers, Highly Paid Employees, and Contractors

1 List all officers, directors, trustees, foundation managers and their compensation (see instructions).

(a) Name and address	(b) Title, and average hours per week devoted to position	(c) Compensation (If not paid, enter -0-)	(d) Contributions to employee benefit plans and deferred compensation	(e) Expense account, other allowances
Mark C. McKinley 2311 Cedar Springs Rd, Ste 350 Dallas, TX 75201	Pres/Treas 10.00	0.	0.	0.
Karla K. McKinley 2311 Cedar Springs Rd, Ste 350 Dallas, TX 75201	VP/Secretary 5.00	0.	0.	0.
John K. McKinley, Jr. 2311 Cedar Springs Rd, Ste 350 Dallas, TX 75201	Director 1.00	0.	0.	0.

2 Compensation of five highest-paid employees (other than those included on line 1 – see instructions). If none, enter 'NONE.'

(a) Name and address of each employee paid more than \$50,000	(b) Title, and average hours per week devoted to position	(c) Compensation	(d) Contributions to employee benefit plans and deferred compensation	(e) Expense account, other allowances
None				

Total number of other employees paid over \$50,000

0

Part X Minimum Investment Return (All domestic foundations must complete this part. Foreign foundations, see instructions.)

1 Fair market value of assets not used (or held for use) directly in carrying out charitable, etc., purposes.		
a Average monthly fair market value of securities	1 a	2,641,060.
b Average of monthly cash balances	1 b	272,219.
c Fair market value of all other assets (see instructions)	1 c	2,380.
d Total (add lines 1a, b, and c)	1 d	2,915,659.
e Reduction claimed for blockage or other factors reported on lines 1a and 1c (attach detailed explanation)	1 e	0.
2 Acquisition indebtedness applicable to line 1 assets	2	0.
3 Subtract line 2 from line 1d	3	2,915,659.
4 Cash deemed held for charitable activities. Enter 1-1/2% of line 3 (for greater amount, see instructions)	4	43,735.
5 Net value of noncharitable-use assets. Subtract line 4 from line 3. Enter here and on Part V, line 4	5	2,871,924.
6 Minimum investment return. Enter 5% of line 5	6	143,596.

Part XI Distributable Amount (see instructions) (Section 4942(j)(3) and (j)(5) private operating foundations and certain foreign organizations check here ☐ and do not complete this part.)

1 Minimum investment return from Part X, line 6	1	143,596.
2a Tax on investment income for 2016 from Part VI, line 5	2 a	990.
b Income tax for 2016 (This does not include the tax from Part VI)	2 b	
c Add lines 2a and 2b	2 c	990.
3 Distributable amount before adjustments. Subtract line 2c from line 1	3	142,606.
4 Recoveries of amounts treated as qualifying distributions	4	
5 Add lines 3 and 4	5	142,606.
6 Deduction from distributable amount (see instructions)	6	
7 Distributable amount as adjusted. Subtract line 6 from line 5. Enter here and on Part XIII, line 1	7	142,606.

Part XII Qualifying Distributions (see instructions)

1 Amounts paid (including administrative expenses) to accomplish charitable, etc., purposes		
a Expenses, contributions, gifts, etc. — total from Part I, column (d), line 26	1 a	302,636.
b Program-related investments — total from Part IX-B	1 b	
2 Amounts paid to acquire assets used (or held for use) directly in carrying out charitable, etc., purposes	2	
3 Amounts set aside for specific charitable projects that satisfy the:		
a Suitability test (prior IRS approval required)	3 a	
b Cash distribution test (attach the required schedule)	3 b	
4 Qualifying distributions. Add lines 1a through 3b. Enter here and on Part V, line 8, and Part XIII, line 4	4	302,636.
5 Foundations that qualify under section 4940(e) for the reduced rate of tax on net investment income. Enter 1% of Part I, line 27b (see instructions)	5	990.
6 Adjusted qualifying distributions. Subtract line 5 from line 4	6	301,646.

Note: The amount on line 6 will be used in Part V, column (b), in subsequent years when calculating whether the foundation qualifies for the section 4940(e) reduction of tax in those years.

Part XIII Undistributed Income (see instructions)

	(a) Corpus	(b) Years prior to 2015	(c) 2015	(d) 2016
1 Distributable amount for 2016 from Part XI, line 7				142,606.
2 Undistributed income, if any, as of the end of 2016.				
a Enter amount for 2015 only			109,157.	
b Total for prior years 20 <u>12</u> , 20 <u>11</u> , 20 <u>08</u>		135,928.		
3 Excess distributions carryover, if any, to 2016				
a From 2011				
b From 2012				
c From 2013				
d From 2014				
e From 2015				
f Total of lines 3a through e	0.			
4 Qualifying distributions for 2016 from Part XII, line 4 ▶ \$ <u>302,636.</u>				
a Applied to 2015, but not more than line 2a			109,157.	
b Applied to undistributed income of prior years (Election required — see instructions)		135,928.		
c Treated as distributions out of corpus (Election required — see instructions)	0.			
d Applied to 2016 distributable amount				57,551.
e Remaining amount distributed out of corpus	0.			
5 Excess distributions carryover applied to 2016 (If an amount appears in column (d), the same amount must be shown in column (a).)	0.			0.
6 Enter the net total of each column as indicated below:				
a Corpus Add lines 3f, 4c, and 4e Subtract line 5	0.			
b Prior years' undistributed income Subtract line 4b from line 2b		0.		
c Enter the amount of prior years' undistributed income for which a notice of deficiency has been issued, or on which the section 4942(a) tax has been previously assessed		0.		
d Subtract line 6c from line 6b. Taxable amount — see instructions		0.		
e Undistributed income for 2015. Subtract line 4a from line 2a. Taxable amount — see instructions			0.	
f Undistributed income for 2016. Subtract lines 4d and 5 from line 1. This amount must be distributed in 2017				85,055.
7 Amounts treated as distributions out of corpus to satisfy requirements imposed by section 170(b)(1)(F) or 4942(g)(3) (Election may be required — see instructions)	0.			
8 Excess distributions carryover from 2011 not applied on line 5 or line 7 (see instructions)	0.			
9 Excess distributions carryover to 2017. Subtract lines 7 and 8 from line 6a	0.			
10 Analysis of line 9:				
a Excess from 2012				
b Excess from 2013				
c Excess from 2014				
d Excess from 2015				
e Excess from 2016				

N/A

- b** Check box to indicate whether the foundation is a private operating foundation described in section ☐ 4942(j)(3) or ☐ 4942(j)(5)

- b** 85% of line 2a

- c** Qualifying distributions from Part XII,
line 4 for each year listed

- d**
- Amounts included in line 2c not used directly for active conduct of exempt activities

- e** Qualifying distributions made directly for active conduct of exempt activities
Subtract line 2d from line 2c

- 3** Complete 3a, b, or c for the alternative test relied upon.

- a 'Assets' alternative test – enter:

- (1) Value of all assets**

- (2) Value of assets qualifying under section 4942(i)(3)(B)(i)

- b** 'Endowment' alternative test — enter 2/3 of minimum investment return shown in Part X, line 6 for each year listed

- c 'Support' alternative test – enter

- (1) Total support other than gross investment income (interest, dividends, rents, payments on securities loans (section 512(a)(5)), or royalties)

- (2) Support from general public and 5 or more exempt organizations as provided in section 4942(j)(3)(B)(iii)

- (3) Largest amount of support from an exempt organization

- (4) Gross investment income**

1 Information Regarding Foundation Managers:

- a List any managers of the foundation who have contributed more than 2% of the total contributions received by the foundation before the close of any tax year (but only if they have contributed more than \$5,000). (See section 507(d)(2))

None

- b** List any managers of the foundation who own 10% or more of the stock of a corporation (or an equally large portion of the ownership of a partnership or other entity) of which the foundation has a 10% or greater interest

None

2 Information Regarding Contribution, Grant, Gift, Loan, Scholarship, etc., Programs:

Check here ☐ if the foundation only makes contributions to preselected charitable organizations and does not accept unsolicited requests for funds. If the foundation makes gifts, grants, etc. (see instructions) to individuals or organizations under other conditions, complete items 2a, b, c, and d.

- a The name, address, and telephone number or e-mail address of the person to whom applications should be addressed

See Statement 11

- b** The form in which applications should be submitted and information and materials they should include:

See Statement for Line 2a

- c Any submission deadlines:**

See Statement for Line 2a

- d Any restrictions or limitations on awards, such as by geographical areas, charitable fields, kinds of institutions, or other factors.

See Statement for Line 2a

Part XV Supplementary Information (continued)**3** Grants and Contributions Paid During the Year or Approved for Future Payment

Recipient	If recipient is an individual, show any relationship to any foundation manager or substantial contributor	Foundation status of recipient	Purpose of grant or contribution	Amount
Name and address (home or business)				
<i>a</i> Paid during the year Statement 12	N/A		Statement 12	292,665.
Total				3 a 292,665.
<i>b</i> Approved for future payment				
Total				3 b

Merrymac McKinley Foundation, Inc.

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Statement 1
Form 990-PF, Part I, Line 11
Other Income

	(a) Revenue per Books	(b) Net Investment Income	(c) Adjusted Net Income
Dorchester Minerals K-1	\$ 3,300.	\$ 3,300.	
Enterprise Prod. Pts K-1	-6,334.		
Plains All American K-1	-20,218.		
Recoveries/2015 Form 4720	800.		
Tax refund	693.		
Total	\$ -21,759.	\$ 3,300.	\$ 0.

Statement 2
Form 990-PF, Part I, Line 16a
Legal Fees

	(a) Expenses Per Books	(b) Net Investment Income	(c) Adjusted Net Income	(d) Charitable Purposes
Legal services	\$ 2,131.			\$ 2,131.
Total	\$ 2,131.	\$ 0.		\$ 2,131.

Statement 3
Form 990-PF, Part I, Line 16b
Accounting Fees

	(a) Expenses per Books	(b) Net Investment Income	(c) Adjusted Net Income	(d) Charitable Purposes
Tax return preparation services	\$ 10,800.	\$ 5,400.		\$ 5,400.
Total	\$ 10,800.	\$ 5,400.		\$ 5,400.

Statement 4
Form 990-PF, Part I, Line 16c
Other Professional Fees

	(a) Expenses per Books	(b) Net Investment Income	(c) Adjusted Net Income	(d) Charitable Purposes
Investment management fees	\$ 4,741.	\$ 4,741.		
Total	\$ 4,741.	\$ 4,741.		\$ 0.

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Statement 5
Form 990-PF, Part I, Line 18
Taxes

	(a) Expenses per Books	(b) Net Investment Income	(c) Adjusted Net Income	(d) Charitable Purposes
Excise taxes paid	\$ 1,860.			
Foreign taxes paid	748.	\$ 748.		
Total	\$ 2,608.	\$ 748.		\$ 0.

Statement 6
Form 990-PF, Part I, Line 23
Other Expenses

	(a) Expenses per Books	(b) Net Investment Income	(c) Adjusted Net Income	(d) Charitable Purposes
Bank service charges	\$ 146.			\$ 146.
Filing fees	250.			250.
Miscellaneous	114.			114.
Office supplies and expenses	853.			853.
Partnership deductions from K-1's	4,174.	\$ 4,115.		
Postage	341.			341.
Total	\$ 5,878.	\$ 4,115.		\$ 1,704.

Statement 7
Form 990-PF, Part II, Line 10b
Investments - Corporate Stocks

<u>Corporate Stocks</u>	<u>Valuation Method</u>	<u>Book Value</u>	<u>Fair Market Value</u>
Chevron Texaco	Cost	\$ 141,751.	\$ 858,268.
Exxon Mobil Corp	Cost	38,989.	57,766.
Honeywell Intl Inc.	Cost	204,250.	231,700.
JPMorgan Chase & Co	Cost	18,025.	43,145.
Phillip Morris Intl Inc.	Cost	12,175.	43,458.
AQR Multi-Strategy Alternative Fd	Cost	13,626.	13,321.
AGS Managed Futures Str Cl Y	Cost	4,862.	4,451.
Cohen & Steers Global Infr Fd Cl I	Cost	4,297.	3,796.
Eaton Vance Floating Rate Fd Cl I	Cost	11,569.	11,674.
Ishares Russell 1000 Growth	Cost	55,212.	64,514.
Ishares Russell 1000 Value	Cost	59,452.	67,890.
Ishares TIPS	Cost	5,835.	5,772.
Ishares 1-3 Year Credit Bond ETF	Cost	8,599.	8,605.
Ishares Russell 2000 Growth	Cost	17,858.	18,935.
Ishares Russell 2000 Value	Cost	18,904.	21,766.
Ishares Inc Core MSCI Emerging Mkts ETF	Cost	14,836.	14,263.
Ishares Tr Core MSCI EAFE ETF	Cost	39,350.	38,238.
Oppenheimer Fundamental Alternative Fd	Cost	13,006.	13,135.
PIMCO Short Term Fd Cl P	Cost	1,447.	1,456.
Vanguard Total International Bond ETF	Cost	2,909.	2,877.
Vanguard US Growth Fd Investor	Cost	15,261.	26,944.
Vanguard Wellington Fd Admiral	Cost	90,920.	123,592.

Merrymac McKinley Foundation, Inc.

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Statement 7 (continued)
Form 990-PF, Part II, Line 10b
Investments - Corporate Stocks

<u>Corporate Stocks</u>	<u>Valuation Method</u>	<u>Book Value</u>	<u>Fair Market Value</u>
Vanguard Windsor II Fd Adm	Cost	\$ 665,468.	\$ 709,966.
Vanguard 500 Index Fd Adm	Cost	14,591.	29,635.
ALPS Alerian MLP ETF	Cost	122,500.	126,000.
Advansix Inc.	Cost	1,030.	1,771.
	Total	<u>\$ 1,596,722.</u>	<u>\$ 2,542,938.</u>

Statement 8
Form 990-PF, Part II, Line 10c
Investments - Corporate Bonds

<u>Corporate Bonds</u>	<u>Valuation Method</u>	<u>Book Value</u>	<u>Fair Market Value</u>
Basket Stars Issuer 8/1% SV100	Cost	\$ 75,000.	\$ 74,100.
	Total	<u>\$ 75,000.</u>	<u>\$ 74,100.</u>

Statement 9
Form 990-PF, Part II, Line 15
Other Assets

	<u>Book Value</u>	<u>Fair Market Value</u>
Art	\$ 2,380.	\$ 2,380.
Total	<u>\$ 2,380.</u>	<u>\$ 2,380.</u>

Statement 10
Form 990-PF, Part VII-B, Line 2b
Section 4942 (a) (2) - Incorrect Valuation of Assets

See Attachment to Form 990-PF (2016), Part VII-B - Question 2(b).

Statement 11
Form 990-PF, Part XV, Line 2a-d
Application Submission Information

Name of Grant Program: Merrymac McKinley Foundation, Inc.
Name: Mark McKinley
Care Of:
Street Address: 2311 Cedar Springs Rd, Suite 350
City, State, Zip Code: Dallas, TX 75201
Telephone: (214) 922-9033
E-Mail Address: vsmith@mk-resources.com
Form and Content: None
Submission Deadlines: None

Merrymac McKinley Foundation, Inc.

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Statement 11 (continued)
Form 990-PF, Part XV, Line 2a-d
Application Submission Information

Restrictions on Awards: None

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Client MERRYMAC

Merrymac McKinley Foundation, Inc.

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Statement 12

Form 990-PF, Part XV, Line 3a

Grants and Contributions Paid During the Year

<u>Recipient Name and address (home or business)</u>	<u>Donee Relationship</u>	<u>Foundation Status</u>	<u>Purpose of grant or contribution</u>	<u>Amount</u>
The University of Alabama 284 Rose Admin. Bldg. Box 870122 Tuscaloosa, AL 35487	N/A	PC	Towards scholarship and award programs	\$125,000.00
Baylor Health Care System Foundation 3600 Gaston Avenue, Barnett Tower #100 Dallas, TX 75246	N/A	PC	Breast cancer research	\$50,000.00
The George W. Bush Foundation P. O. Box 600610 Dallas, TX 75201	N/A	PC	Towards the George W Bush Presidential Center	\$10,000.00
AMFAR, Foundation for Aids Research 120 Wall Street, 13th Floor New York, NY 10005	N/A	PC	AIDS research initiatives	\$10,000 00
Shelton State Community College 9500 Old Greensboro Rd., Tuscaloosa, AL 35405	N/A	PC	Gift to the Shelton State Foundation Helen H McKinley and John K McKinley Scholarship Fund	\$10,000.00
Highland Park United Methodist Church 3300 Mockingbird Lane Dallas, TX 75205	N/A	PC	Towards the Jesters Program	\$7,860.00
Stillman College 3601 Stillman Boulevard Tuscaloosa, AL 35401	N/A	PC	Sponsorship of Stillman's 140th Anniversary Celebration featuring Dr. Condoleezza Rice	\$7,500 00
University of San Diego 5998 Alcalá Park San Diego, CA 92110	N/A	PC	Toward USD development	\$5,000.00
Highland Park Presbyterian Church 3821 University Blvd. Dallas, TX 75205	N/A	PC	Donation to the Highland Park Presbyterian Church for general operating support	\$5,000.00
The Crystal Charity Ball Two Turtle Creek 3838 Oak Lawn Ave, Suite L150 Dallas, TX 75219	N/A	PC	Towards the Crystal Charity Ball which benefits local Dallas charities providing services to children in the community	\$5,000.00
Southern Methodist University P. O. Box 750402 Dallas, TX 75275	N/A	PC	Toward the University's educational use and in memory of Will Auberty	\$5,000.00

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Merrymac McKinley Foundation, Inc.

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Statement 12

Form 990-PF, Part XV, Line 3a

Grants and Contributions Paid During the Year

<u>Recipient Name and address (home or business)</u>	<u>Donee Relationship</u>	<u>Foundation Status</u>	<u>Purpose of grant or contribution</u>	<u>Amount</u>
The Culver Educational Foundation 1300 Academy Road, #153 Culver, IN 46511	N/A	PC	Toward the Culver Fund providing scholarships and developmental programs for students and teachers	\$5,000.00
UNC Lineberger Comprehensive Cancer Center Campus Box 7295 Chapel Hill, NC 27599	N/A	PC	Cancer research	\$5,000.00
Best Buddies 4455 LBJ Freeway, Suite 902 Dallas, TX 75244	N/A	PC	Support for people with intellectual and development disabilities	\$5,000 00
Salesmanship Club Charitable Golf of Dallas 106 E. 10th Street, Suite 200 Dallas, TX 75203	N/A	PC	Towards Momentous Institute, providing community support for children through education and therapy programs	\$3,750.00
Turning Point 403 Pacific Avenue Terrell, TX 75160	N/A	PC	To provide free adapted outdoor recreational activities for those with physical challenges	\$2,500.00
Advisory Board of Booker T. Washington High School P O. Box 192648 Dallas, TX 75219	N/A	PC	Student development in the performing and visual arts	\$2,500.00
AT&T Performing Arts Center 700 N. Pearl St., Suite N1800 Dallas, TX 75201	N/A	PC	Community and education programs	\$2,500 00
Andy Roddick Foundation 8509 FM 969, Building 509 Austin, TX 78724	N/A	PC	Towards afterschool programs for children across the under-resources areas of Austin, Texas	\$2,500.00
Center for Brain Health 2200 West Mockingbird Lane Dallas, TX 75235	N/A	PC	Towards neuroscience research	\$2,500.00
Dallas Contemporary 161 Glass Street Dallas, TX 75207	N/A	PC	To support progressive artists and art education provided free at the Dallas Contemporary	\$2,500 00
KIPP Foundation 135 Main Street, Suite 1700 San Francisco, CA 94105	N/A	PC	Support to four community Kipp sponsored schools providing free education to children in underserved communities	\$2,500.00

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Merrymac McKinley Foundation, Inc.

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Statement 12

Form 990-PF, Part XV, Line 3a

Grants and Contributions Paid During the Year

<u>Recipient Name and address (home or business)</u>	<u>Donee Relationship</u>	<u>Foundation Status</u>	<u>Purpose of grant or contribution</u>	<u>Amount</u>
The Alzheimer's Association 3001 Knox Street, Suite 200 Dallas, TX 75207	N/A	PC	Towards Alzheimer's Research	\$2,500.00
The Leukemia & Lymphoma Society 8111 LBJ Freeway, Suite 425 Dallas, TX 75251	N/A	PC	To aid blood cancer research	\$2,000.00
Project Soar 1012 S. St NW Washington, DC 20001	N/A	PC	Towards providing programming/satellite to provide curriculum and programs to aid adolescent girls and communities in need throughout Morocco	\$2,000.00
City House 901 18th Street Plano, TX 75074	N/A	PC	Provide emergency shelter services for local youth	\$2,000.00
University of Alabama c/o Michelle Nelson 12034 Brookmeadow Lane Dallas, TX 75218	N/A	PC	North Texas student scholarship fund	\$1,500 00
The Family Place P. O Box 7999 Dallas, TX 75209	N/A	PC	Supporting efforts to stop family violence	\$1,500 00
North Texas PGA Junior Golf Foundation 8301 Harry Hines Blvd. Dallas, TX 75235	N/A	PC	Sponsorship to benefit Texas Scottish Rite Hospital for Children	\$1,000 00
Aberg Center for Literacy 5100 Ross Avenue Dallas, TX 75206	N/A	PC	Support Literacy Program	\$1,000.00
Hospice of West Alabama 3851 Loop Road Tuscaloosa, AL 35404	N/A	PC	Towards providing care for individuals without insurance	\$1,000 00
Scottish Rite Hospital 2222 Welborn Street Dallas, TX 75219	N/A	PC	Benefit to young patients of the Texas Scottish Rite Hospital for Children	\$500 00
Visiting Nurse Association of Texas 1600 Viceroy Drive Dallas, TX 75235	N/A	PC	Towards Hospice Program	\$500 00

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Client MERRYMAC

Merrymac McKinley Foundation, Inc.

74-2457886

Statement 12

Form 990-PF, Part XV, Line 3a

Grants and Contributions Paid During the Year

Recipient Name and address (home or business)	Donee Relationship	Foundation Status	Purpose of grant or contribution	Amount
Pebbles and Stones P O Box 625 Ada, MI 49301	N/A	PC	Towards providing inspirational teaching/interactive curriculum training for world-wide churches and ministries	\$250.00
KIPP DFW 1401 S. Lamar St., Lower Level Dallas, TX 75215	N/A	PC	Support to four community Kipp sponsored schools providing free education to children in underserved communities	\$250.00
Texas Fraternal Order of Police Fnd P.O.Box 6330 Bryan, TX 77805	N/A	PC	Towards support of the Texas State Lodge	\$55.00
				<u>\$292,665.00</u>

ATTACHMENT TO FORM 990-PF (2016)

PART VII-B – QUESTION 2(b)

MERRYMAC McKINLEY FOUNDATION, INC.

EIN: 74-2457886

This is a statement in connection with Part VII-B, Question 2(b), of the Form 990-PF for tax year 2016 for the Merrymac McKinley Foundation, Inc. (the “Foundation”). The Foundation has voluntarily disclosed and corrected errors made in prior years (1999 through 2014) related to the valuation of non-charitable use assets and the resulting understatements of undistributed income for those years. Certain other adjustments have been made to items of income and expenses as previously reported. Also, the Part V, Qualification Under Section 4940(e) for Reduced Tax on Net Investment Income, previous five-year data has been adjusted for the correct adjusted qualifying distributions and net value of non-charitable use assets that would have been reported had the Form 990-PF for each of those years also been amended.

Facts and Circumstances. In 2016, the Foundation discovered that there had been an error in the calculation of the average fair value of certain non-charitable use assets of the Foundation since the year 1999. The error resulted in the understatement of the average fair value for the years 1999 through 2014, and that understatement resulted in a shortfall in each of those years in the qualifying distributions made by the Foundation. The Foundation had employed and relied on qualified outside accountants for the calculations and the preparation of the returns during all years affected. However, when the math error was discovered by Foundation personnel, the Foundation immediately sought legal advice from attorneys familiar with private foundation tax regulations and also engaged tax compliance services from a certified public accountant with significant experience preparing Forms 990-PF.

The Foundation has corrected the undistributed income by making distributions in excess of the cumulative total undistributed amount to qualified public charities in calendar year 2016 to cover all cumulative undistributed amounts from all years affected, including years that are closed by the statute of limitations (1999-2012). The Foundation is treating such distributions as being made out of the undistributed income for the taxable years for which a tax would have been imposed. Although the closed year returns are not being amended, the Foundation has determined the proper adjustments (as if it had drafted revised returns for 1999 through 2012) to the qualifying distributions and fair value calculations in order to calculate the cumulative undistributed amounts for those years, and those undistributed amounts have been included to calculate the total aggregate shortfall that carries over to 2014. The first tax year that, upon correction, had a taxable undistributed amount was 2002. All of the cumulative undistributed amounts through 2012 have been stated in Part XIII, Line 2b, of the Form 990-PF for 2016.

For ease of reference, below is a summary of the cumulative undistributed amounts:

<u>Year</u>	<u>Undistributed Amount</u>	<u>Cumulative</u>
2002	\$3,337	\$3,337
2003	\$5,135	\$8,472

2004	\$10,305	\$18,777
2005	\$30,250	\$49,027
2006	\$15,550	\$64,577
2007	\$13,937	\$78,514
2008	\$41,269	\$119,783
2009	\$8,797	\$128,580
2010	\$-6,638	\$121,942
2011	\$-13,856	\$108,086
2012	\$26,289	\$134,375
2013	\$-5,649	\$128,726
2014	\$42,319	\$171,045
2015	\$-35,117	\$135,928

In addition to the Form 990-PF for 2016, please refer to the Form 990-PF for 2015, the Amended Form 990-PF for 2013, and the Amended Form 990-PF for 2014. The Foundation also filed a Form 4720, Return of Certain Excise Taxes, for 2013, 2014, 2015, and 2016, and a request for abatement under Section 4962 of the Internal Revenue Code of 1986, as amended (the "Code").

The remainder of this statement will show that the Foundation meets the reasonable cause exception under Code Section 4942(a)(2) and that no tax should be imposed with respect to the undistributed amounts.

Exception Under Code Section 4942(a)(2). Code Section 4942(a)(2) provides that no tax will be imposed on a foundation with respect to the undistributed amount if the following requirements are met:

- (1) The failure to distribute resulted solely from an incorrect valuation of assets;
- (2) the improper valuation was not willful and was due to reasonable cause;
- (3) the foundation makes the qualifying distributions of the amount during the "allowable distribution period" – this is the period beginning with the first day of the first tax year following the tax year in which the incorrect valuation occurred and ending 90 days after the mailing of a notice of deficiency with respect to the initial tax extended by (a) the period during which a deficiency cannot be assessed because a Tax Court petition was filed, and (b) any other period which the Internal Revenue Service ("the Service") determines is reasonable and necessary to permit a distribution;
- (4) the foundation notifies the Service that the amount has been distributed to correct the failure; and
- (5) the foundation elects to treat the distributions as made from the undistributed income of the particular tax year for which a tax would have been imposed were it not for this relief provision (i.e., the year in which it made the valuation error).¹

¹ I.R.C. § 4942(a)(2).

1. Failure to Distribute Resulted Solely From An Incorrect Valuation of Assets. First, the failure to distribute such amounts in the prior tax years resulted solely from an incorrect valuation of assets. As described above, the Foundation's outside accountants made a calculation error in the calculation of the average fair value of certain non-charitable use assets. The error resulted in the understatement of the average fair value for the years 1999 through 2014, and that understatement resulted in a shortfall in each of those years in the qualifying distributions made by the Foundation.

The Foundation's assets are held and managed by several different investment management firms. As such, an outside accountant created a spreadsheet in order to consolidate and track the investment assets of the Foundation as a whole. The spreadsheet reflected the average fair market value account balances by investment managers and type of security held on a monthly basis. The columns for the year were then totaled and divided by twelve months to compute the average annual account balances. The same spreadsheet format was used from 1999 through 2014.

However, there is one mutual fund investment manager that reports to the Foundation on a quarterly basis rather than on a monthly basis. It was in this account that the average annual fair market value account balance was miscalculated. The miscalculation was due to a formula error in the spreadsheet. When computing the average fair market of assets of this investment manager, the four quarterly values for this account were mistakenly divided by twelve rather than four (most likely caused by copying the formula in the adjacent cell of the spreadsheet). As a result, the fair market value balance for the account was understated by sixty-seven percent. The spreadsheet historically had also been reviewed annually by another qualified accountant who prepared the Foundation's tax returns.

2. Not Willful and Due to Reasonable Cause. Second, this incorrect valuation was not willful and was due to reasonable cause. The terms "willful" or "willful neglect" and "reasonable cause" are not defined in either Code Section 4942 or Code Section 4962 (relating to the request for the abatement of certain taxes, including the excise tax imposed on failure to distribute the required amount under Code Section 4942), but certain Treasury Regulations, case law, and other published guidance offer clarity regarding these terms.

In general, "willful" means "voluntary, conscious, and intentional,"² and no motive is necessary to make an act (or failure to act) to avoid the legal restrictions on a foundation or the occurrence of any tax willful.³ Treasury Regulation Section 1.507-1(c)(5) further provides that a foundation's act (or failure to act) is not willful if the foundation (or foundation manager) does not know that it is an act (or failure to act) to which Chapter 42 of the Code applies. The United States Supreme Court has described "willful neglect" as meaning a "conscious, intentional failure or reckless indifference."⁴ The Service has also noted that willful neglect implies a "voluntary, conscious, and intentional failure to exercise the care that a reasonable person would observe under the circumstances to see that the standards were observed, despite knowledge of

² See Treas. Reg. § 53.4945-1(a)(2)(iv).

³ *Id.*; see also Treas. Reg. § 1.507-1(c)(5).

⁴ See *United States v. Boyle*, 469 U.S. 241 (1985).

the standards or rules in question.”⁵ If it is determined that a violation was caused by willful neglect, such a determination will prevent abatement of the first-tier tax under Code Section 4962, but the lack of willful neglect would not, in itself, justify abatement, as the taxpayer must also prove there was reasonable cause.⁶

In particular, Treasury Regulation Section 53.4942(a)-1(b)(2) indicates that a valuation mistake is not willful and is due to reasonable cause, if, under all the facts and circumstances, the foundation made all reasonable efforts in good faith to value the assets under the rules described in paragraph (c)(4) of Treasury Regulation Section 53.4942(a)-2.⁷ A foundation ordinarily meets this standard if it obtained a bona fide appraisal by a qualified appraiser (regardless whether this person is a disqualified person with respect to the foundation), the foundation fully disclosed the relevant facts to the appraiser, and the foundation relied on the appraisal.⁸ However, a foundation’s failure to obtain an appraisal is not evidence that a valuation error is without reasonable cause.⁹

Treasury Regulations under other Chapter 42 Code sections reflect that a reasonable cause standard is “ordinary business care and prudence.”¹⁰ Certain cases have defined “reasonable cause” in a similar fashion in the context of other taxpayers.¹¹ In addition, if a taxpayer relies in good faith on the advice of counsel or a qualified tax professional, such reliance may establish reasonable cause and show an absence of willful neglect. When a taxpayer engages a competent tax professional, provides the professional with all necessary information, and requests the professional to make a determination on a tax matter or prepare tax returns, the taxpayer meets the reasonable cause standard, by doing “all that ordinary business care and prudence can reasonably demand.”¹² It is a generally accepted principle that the reliance on the advice of counsel or expert accountants, when it is sought and received in good faith, is reasonable cause in certain circumstances.¹³

As an example, in the *Haywood Lumber* case, the taxpayer, a personal holding company, consulted a certified public accountant (“CPA”) who was competent to advise on tax matters to prepare the proper corporate tax returns.¹⁴ The taxpayer disclosed to the CPA all necessary information about the company.¹⁵ The taxpayer was not aware that it was in fact a personal holding company, and although the CPA was aware of this fact, he did not prepare a personal holding company surtax return for the taxpayer.¹⁶ The taxpayer filed only the returns prepared

⁵ TAM 201423035. The Foundation acknowledges that it cannot rely on this technical advice memorandum as precedent, but it found the definition instructive for purposes of this statement.

⁶ *Id.*

⁷ See Treas. Reg. § 53.4942(a)-1(b)(2).

⁸ *Id.*

⁹ *Id.*

¹⁰ See, e.g., Treas. Reg. §§ 53.4941(1)-1(b)(5); 53.4944-1(b)(2)(iii); 53.4945-1(a)(2)(v); 53.4955-1(b)(6); 53.4958-1(d)(6).

¹¹ See, e.g., *Haywood Lumber & Mining Co. v. Comm’r*, 178 F.2d 769 (2d Cir. 1950); *U.S. v. Boyle*, 469 U.S. 241 (1985).

¹² *Haywood Lumber*.

¹³ See *id.*; see also *Hatfried, Inc. v. Comm’r*, 162 F.2d 628 (3d Cir. 1947); *Orient Inv. & Finance Co. v. Comm’r*, 166 F.2d 601 (D.C. Cir. 1948).

¹⁴ See *Haywood Lumber*.

¹⁵ See *id.*

¹⁶ See *id.*

by the CPA.¹⁷ The Tax Court held that because the taxpayer had not specifically inquired of the CPA about the personal holding return, but rather “awaited passively,” he had not shown ordinary business care and prudence.¹⁸ The Court of Appeals reversed the opinion of the Tax Court, holding that the taxpayer had in fact shown reasonable cause in failing to file the proper tax returns, when he relied on the advice of a CPA competent to advise on tax matters.¹⁹

In the *Boyle* case, the United States Supreme Court affirmed the precedent (including *Haywood Lumber*) which had established that relying on counsel or tax professionals for substantive questions of law does constitute “ordinary business care and prudence,” and thus, reasonable cause.²⁰

In Technical Advice Memorandum 201423035,²¹ the Trustee of a trust consulted a tax preparer that held himself out as an expert authorized to practice before the Service.²² The tax preparer mischaracterized the trust as a complex, taxable trust, rather than a non-exempt charitable trust subject to the private foundation provisions of Chapter 42 of the Code.²³ Relying on this advice, the Trustee made donations to the charitable beneficiaries of the trust, treating them as charitable deductions of a taxable trust, instead of qualifying distributions of a private foundation.²⁴ The amounts donated did not equal what would have been required distributed amounts of the private foundation over the years in question.²⁵ After examining the trust’s tax returns, the Service issued a “no-change” letter, stating that no change to the tax returns were necessary.²⁶ Subsequently, the charitable beneficiaries sued the Trustee and the trust, and the Trustee engaged a new accountant and new tax counsel, who informed the Trustee that the trust was actually a non-exempt charitable trust subject to the private foundation provisions.²⁷ To correct its failure, the Trustee filed Forms 990-PF with the Service, paid the excise tax and penalty for underpayment of estimated tax, plus interest.²⁸ The Trustee also made qualifying distributions of all remaining undistributed income for the years in question.²⁹ The Trustee then requested that the excise tax be abated under Code Section 4962, because the failure to distribute was due to reasonable cause and not willful neglect.³⁰

The Service granted the abatement request after finding that under-distribution was properly corrected and the under-distribution was due to reasonable cause and not willful neglect.³¹ The memorandum states that reasonable cause means “ordinary business care and prudence,” and that “when the taxpayer has obtained advice from a competent tax professional on the specific matter

¹⁷ See *id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Boyle*.

²¹ TAM 201423035. The Foundation acknowledges that it cannot rely on this technical advice memorandum as precedent, but it found the memorandum instructive for purposes of this statement.

²² See *id.*

²³ See *id.*

²⁴ See *id.*

²⁵ See *id.*

²⁶ See *id.*

²⁷ See *id.*

²⁸ See *id.*

²⁹ See *id.*

³⁰ *Id.*

³¹ See *id.*

and the taxpayer has provided the advisor with all the necessary information, the taxpayer has exercised ordinary business care.”³² In this case, the Service concluded that the Trustee showed ordinary business care and prudence by consulting the accountant and by following the instructions in the trust document in making the charitable donations, and the Trustee relied in good faith on the advice of the accountant.³³

In the Foundation’s case, the Foundation’s failure to distribute the required amounts was due to reasonable cause and was not willful. There was no voluntary, conscious, and intentional decision on the part of the Foundation to fail to make the proper distributions; the Foundation sought to exercise the care that a reasonable person would observe. The Foundation exercised ordinary business care and prudence by engaging qualified outside tax accountants to prepare the Foundation’s tax returns, calculate the Foundation’s net asset value, and advise the Foundation on its required minimum distributions. After fully disclosing all of its assets and relevant information to the accountants, the Foundation relied on the accountants to calculate its net asset value and the minimum required distribution amount each year and to prepare its tax returns in accordance with applicable law. The Foundation relied on the accountants to use commonly accepted appraisal methods in valuing the Foundation’s assets, as described in Treasury Regulation Section 53.4942(a)-2(c)(4); however, error in the formula calculation in the spreadsheet (as described above) led to the incorrect valuation of assets. The Foundation believed in good faith that it was distributing the proper amounts for such tax years, since it did not discover the valuation error until 2016.

Like the taxpayers in the *Haywood Lumber* case and Technical Advice Memorandum 201423035, the Service should determine that there is no willful act or willful neglect on the part of the Foundation, and that the Foundation exercised ordinary business care and prudence to satisfy the standard for reasonable cause.

3. Qualifying Distributions Made During Allowable Distribution Period. Third, the Foundation has made qualifying distributions in excess of the cumulative total undistributed amount to qualified public charities in calendar year 2016, which is during the allowable distribution period, to cover all cumulative undistributed amounts from all years affected, including years that are closed by the statute of limitations (1999-2012). Although the failure to distribute relates back to the tax year 1999, the Foundation only discovered the valuation error in 2016, and the Foundation has not yet been notified of a deficiency by the Service with respect to the initial tax, so the Foundation has made the distributions during the allowable distribution period.

4. Notice to the Service Regarding Distributions Made. Fourth, by this statement, the Foundation hereby notifies the Service that the Foundation has made the qualifying distributions to qualified public charities in calendar year 2016 to cover all cumulative undistributed amounts from all years affected, including the closed years. Because there is no separate form to notify the Service of this matter, this statement included with the Foundation’s Form 990-PF for 2016 should properly suffice for this requirement. See also Amended Forms 990-PF for 2013 and 2014, as well as Form 990-PF for 2015 filed by the Foundation.

³² *Id.*

³³ *See id.*

5. Election to Treat Distributions As Made from Undistributed Income of Relevant Tax Years. Finally, the Foundation has elected to treat the distributions as made from the undistributed income of the particular tax year for which a tax would have been imposed were it not for this relief provision (i.e., the year of the valuation error).

Under General Counsel Memorandum 39808, the Service concluded that it could make certain adjustments to years closed by the statute of limitations.³⁴ In the memorandum, a private foundation incorrectly computed its minimum investment return and understated its required distributable amount for 1982.³⁵ The private foundation's qualifying distributions for that year were greater than the required distributed amount (as incorrectly calculated), and thus, the private foundation took an excess distribution carryover which it applied in 1986.³⁶ After examining the 1986 return, the Service recognized that the error occurred in 1982, a year which was closed for purposes of the statute of limitations.³⁷ The Service determined that it could adjust the excess distribution carryover for a year not barred by the statute of limitations (1986) by recalculating the distributable amount of amount of qualifying distributions for closed years.³⁸ The Service cited several cases dealing with net operating loss carryovers to establish the general principle that, while it cannot recalculate the investment income and impose an excise tax for a closed year, it can recalculate the distributable amount and the amount of qualifying distributions for a closed year, and reapply (or disallow) any excess carryovers in an open year.³⁹

In the Foundation's case, the valuation error applied to tax years 1999-2014. Although the Foundation did not file amended tax returns for 1999-2012 (the closed years), the Foundation has determined the proper adjustments (as if it had drafted revised returns for 1999 through 2012) to qualifying distributions and fair value calculations in order to arrive at the cumulative undistributed amounts and to achieve the correct carryovers to 2013. The first tax year that, upon correction, had a taxable undistributed amount was 2002. All of the cumulative undistributed amounts prior to 2012 have been stated in Part XIII, Line 2b, of the Form 990-PF for 2016, and a summary was provided on pages 1 and 2 of this statement.

As a part of revising the calculations for the closed years, the Foundation determined that it had excess distributions available in two years. The Foundation determined to make the election to treat current year qualifying distributions in excess of the immediately preceding tax year's undistributed income as being made out of the undistributed income for prior years. The Foundation reviewed the oldest year first and made the following determinations. The elections made virtually on the amended returns were as follows (see following pages).

³⁴ GCM 39808.

³⁵ *See id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

Tax year 2010 unamended return:

The excess available was: 6,638.00

It was applied as follows:

Tax Year

2001	3,337.00
2002	3,301.00
	<u>6,638.00</u>

Tax year 2011 unamended return:

The excess available was: 13,856.00

It was applied as follows:

Tax Year

2002	1,834.00
2003	10,305.00
2004	1,717.00
	<u>13,856.00</u>

Tax year 2012 unamended return:

There was no excess, just a new additional undistributed amount

Below is the roll forward of undistributed amounts by year at the beginning of 2013 assuming that the Foundation was allowed the election to use the excesses in the years 2010 and 2011 as described above:

2004	28,533.00
2005	15,550.00
2006	13,937.00
2007	41,269.00
2008	8,797.00
2009	-
2010	-
2011	26,289.00
	<u>134,375.00</u>

Based on this pattern of FIFO, on the Amended Form 990-PF for 2013, the excess available of \$5,649 should be treated as being made out of the tax year ending:

Tax Year	
2004	5,649.00
	<u>5,649.00</u>

Based on the above calculations, the rolled forward undistributed amounts going into the beginning of 2014 would be as follows:

2004	22,884.00
2005	15,550.00
2006	13,937.00
2007	41,269.00
2008	8,797.00
2009	-
2010	-
2011	26,289.00
	<u>128,726.00</u>

Because qualifying distributions in 2014 were not sufficient to exhaust the undistributed income for the prior year, no Code Section 4942(h)(2) election can be made; there are no excess distributions available to apply to any prior year. As a result, the Amended Form 990-PF for 2014 creates a new undistributed amount of \$42,319.

The rolled forward undistributed amounts going into the beginning of 2015 are:

2004	22,884.00
2005	15,550.00
2006	13,937.00
2007	41,269.00
2008	8,797.00
2009	-
2010	-
2011	26,289.00
2012	42,319.00
	<u>171,045.00</u>

Based on this pattern of FIFO, on the Form 990-PF for 2015, the excess available of \$35,117 should be Treated as being made out of the tax year ending:

Tax Year	
2004	22,884.00
2005	12,233.00
	<hr/>
	35,117.00
	<hr/>

At the end of 2015, the undistributed amounts roll forward as follows:

2004	-
2005	3,317.00
2006	13,937.00
2007	41,269.00
2008	8,797.00
2009	-
2010	-
2011	26,289.00
2012	42,319.00
	<hr/>
	135,928.00
	<hr/>

As of December 31, 2016, the Foundation has distributed amounts in excess of \$135,928 (the cumulative total undistributed amount as of the end of 2015) to qualified charities. The Foundation is treating such distributions as being made out of the undistributed income for the taxable years for which a tax would have been imposed. In addition, the Foundation distributed in excess of \$109,157 to qualified charities prior to December 31, 2016 (which reflects the undistributed income for 2015). In total, the Foundation distributed at least \$245,085 to qualified charities by December 31, 2016. In addition to the Form 990-PF for 2016, please refer to the Form 990-PF for 2015, the Amended Form 990-PF for 2013, and the Amended Form 990-PF for 2014.

Conclusion. For the reasons set forth above, the Foundation has complied with the requirements of Code Section 4942(a)(2)(B), (C), and (D), and requests that no tax be imposed on its failure to distribute the required amounts.