***Greene v. Commissioner, 93 T. C. 306 (1989)***

A taxpayer may exchange one annuity contract for another without tax consequences, even if there is no binding obligation to reinvest the proceeds in the new annuity.

**Summary**

In Greene v. Commissioner, the Tax Court ruled that June Greene's surrender of an annuity contract from one insurer and immediate reinvestment of the proceeds in a new annuity contract with another insurer qualified as a tax-free exchange under IRC Section 1035(a)(3). The court rejected the IRS's argument that a binding obligation to reinvest was required, emphasizing that the statute and regulations did not impose such a condition. The decision clarifies that for Section 1035 to apply, the proceeds must be used to purchase a new annuity, but no formal agreement to do so is necessary. This ruling has significant implications for tax planning involving annuity exchanges.

**Facts**

June Greene, a schoolteacher, had an annuity contract with the Variable Annuity Life Insurance Co. (VALIC) funded by her employer under a salary reduction agreement. In October 1980, Greene surrendered her VALIC annuity and received a check for $35,337. 14, which she immediately used to purchase a new annuity contract from Charter Security Life Insurance Co. (Charter). VALIC required the proceeds to be paid directly to Greene, but she endorsed the check to Charter upon receiving it. There was no binding agreement between Greene and Charter obligating her to use the VALIC proceeds for the new annuity.

**Procedural History**

The IRS determined a deficiency in Greene's 1980 income tax, asserting that the transaction was taxable because Greene had no binding obligation to reinvest the VALIC proceeds in the Charter annuity. Greene petitioned the Tax Court for review. The Tax Court, in a case of first impression, ruled in favor of Greene, holding that the exchange qualified for nonrecognition of gain under Section 1035.

**Issue(s)**

1. Whether the surrender of an annuity contract and immediate reinvestment of the proceeds in another annuity contract constitutes a tax-free exchange under IRC Section 1035(a)(3) when there is no binding obligation to reinvest the proceeds.

**Holding**

1. Yes, because the statute and regulations do not require a binding obligation to reinvest the proceeds in a new annuity contract for the exchange to be tax-free

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under Section 1035.

### Court’s Reasoning

The court found that the exchange of Greene’s VALIC annuity for a Charter annuity qualified as a tax-free exchange under Section 1035(a)(3). The court emphasized that neither the statute nor the regulations required a binding obligation to reinvest the proceeds in a new annuity. The court interpreted “exchange” broadly, as intended by Congress, to include situations where a taxpayer gives up an insurance contract with one company to procure a comparable contract from another. The court also noted that Revenue Ruling 73-124 supported the view that an exchange could occur without a binding agreement, as long as the proceeds were immediately used to purchase a new annuity. The court rejected the IRS’s argument that a binding obligation was necessary, finding no support for this in the law or logic, and ruled that the transaction was a valid exchange under Section 1035.

### Practical Implications

This decision allows taxpayers greater flexibility in managing their annuity contracts without incurring immediate tax liabilities. Attorneys and financial planners can advise clients that they may exchange one annuity for another without a formal agreement to reinvest the proceeds, as long as the exchange is completed promptly. This ruling impacts tax planning strategies, particularly for individuals with multiple annuity contracts. It also sets a precedent for future cases involving similar transactions, clarifying that the absence of a binding obligation does not preclude a tax-free exchange under Section 1035. Subsequent cases and IRS guidance have generally followed this interpretation, reinforcing its practical application in tax law.

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