

state commerce, the company presented accounts which, as the trial court found, show that in the year 1933, the intrastate business resulted in a net operating deficit of \$192,507. On the other hand to have abandoned the intrastate business while operating the interstate would have cost the company gross operating revenues of \$5,271,893. Since the occupation tax challenged is not shown to be a direct burden upon the company's interstate business, the judgment against it is affirmed.

What has been said above disposes of the contention of the railroads that the statute violated the due process clause. It also renders unnecessary consideration of the additional reasons urged by the State in support of the judgments of its Supreme Court. On these we express no opinion.

Affirmed.

LEAHY *v.* STATE TREASURER OF OKLAHOMA
ET AL.

CERTIORARI TO THE SUPREME COURT OF OKLAHOMA.

No. 599. Submitted February 11, 1936.—Decided March 2, 1936.

Decided, upon the authority of *Choteau v. Burnet*, 283 U. S. 691, that an income tax, by the State of Oklahoma, on moneys received by a competent member of the Osage Tribe of Indians as his share of income from mineral resources held by the United States for the Tribe, is not void as a tax upon a federal instrumentality. 173 Okla. 614; 49 P. (2d) 570, affirmed.

CERTIORARI, 296 U. S. 572, to review a judgment against the present petitioner in his action to recover money exacted of him as income taxes.

Mr. Charles Stuart Macdonald, with whom *Mr. G. B. Fulton* was on the brief, submitted for petitioner.

Messrs. C. D. Cund and *C. W. King* submitted for respondents.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

Leahy brought this action in a court of Oklahoma against the State Treasurer and others to recover \$11.99 paid under protest as state income tax. He is a duly enrolled member of the Osage Tribe of Indians, and has long held a certificate of competency. As such member he is entitled to receive, from time to time, his pro rata share of the income of the restricted mineral resources of the Tribe held by the United States for the Tribe under the Act of June 28, 1906, c. 3572, 34 Stat. 539, and later legislation. The tax challenged is upon such income paid to him. Leahy claims that it is void because laid by the State upon a federal instrumentality. The trial court overruled the contention and entered judgment for the defendants. On the authority of *Choteau v. Burnet*, 283 U. S. 691, its action was affirmed by the Supreme Court of the State, three judges dissenting. 173 Okla. 614; 49 P. (2d) 570. We granted certiorari because of the constitutional question presented.

The facts are substantially the same as those presented in *Choteau v. Burnet, supra*, which upheld a federal income tax on a like payment. The applicable statutes and decisions are discussed there. As Leahy was entitled to have the income paid to him and was free to use it as he saw fit, no reason appears why it should not be taxable also by the State.

Affirmed.