

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

MALINDA SMITH

Plaintiff

v.

**UNITED STATES DEPARTMENT OF
LABOR**

Defendant.

Case No.: RWT 10cv3570

MEMORANDUM OPINION

On December 20, 2010, Plaintiff Malinda Smith (“Smith”) filed a Complaint in the District Court of Maryland for Montgomery County, alleging that her “state income tax was intercepted and it will be again.” *Id.* Defendant United States Department of Labor (“Department of Labor”) properly removed the action to this Court pursuant to 28 U.S.C § 1442, and filed a Motion to Dismiss, or in the Alternative, for Summary Judgment soon thereafter. *See* ECF Nos. 1, 8. Despite being warned that her Complaint could be dismissed if she failed to file a timely response to the Department of Labor’s motion, Smith has not filed any response. ECF No. 9.

The Department of Labor argues that Smith’s Complaint must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) because it fails to allege any connection between the Department of Labor and the alleged interception of Smith’s state income tax refund. *Id.* at 4. The Department of Labor is correct. The documents attached to Smith’s Complaint show that Smith’s refund was intercepted by the Central Collection Unit of the Maryland Department of Budget and Management, not by the Department of Labor. Accordingly, Smith’s Complaint fails to state a claim on which

relief can be granted, and the Department of Labor's motion to dismiss will be granted by separate order.

March 9, 2011
Date

/s/
Roger W. Titus
United States District Judge