

James and Margaret Mosbrucker appeal from the bankruptcy appellate panel's (BAP's) affirmance of the bankruptcy court's¹ orders (1) denying their objection to a proof of claim, (2) denying confirmation of their Chapter 12 plan, and (3) dismissing their case. On appeal, the Mosbruckers argue, as they did below, that the penalties and interest the IRS assessed pursuant to 26 U.S.C. § 6672, and included in its proof of claim, are general unsecured claims dischargeable under 11 U.S.C. § 523(a)(7)(B). After careful review of the record and the parties' submissions, we conclude that the bankruptcy court properly denied the Mosbruckers' objection to the IRS's proof of claim: under United States v. Sotelo, 436 U.S. 268, 275 (1978), the tax liability imposed under section 6672 for failure to pay withheld employment taxes to the IRS is a tax, not a penalty. Therefore, the debt is entitled to priority under 11 U.S.C. § 507(a)(8)(C) and is nondischargeable. See 11 U.S.C. §§ 523(a)(1)(A), 1228(a). As such, the liability is required to be paid in full over the life of the debtors' Chapter 12 plan. See 11 U.S.C. § 1222(a)(2). Because the debtors were unable to propose a plan that would provide for full payment of the tax debt to the IRS over the life of their plan, the bankruptcy court did not err in denying confirmation and dismissing the case. See 11 U.S.C. § 1225(a)(6).

Accordingly, we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

¹The Honorable William A. Hill, United States Bankruptcy Judge for the District of South Dakota.