

NO. COA08-453

NORTH CAROLINA COURT OF APPEALS

Filed: 19 May 2009

Sam's East, Inc.,
Plaintiff,

v.

Wake County
No. 06-CVS-3929

Reginald S. Hinton, Secretary
of Revenue of the State of
North Carolina,
Defendant.

Appeal by plaintiff Sam's East, Inc. from order entered 4
January 2008 by Judge Clarence E. Horton, Jr. in Wake County
Superior Court. Heard in the Court of Appeals 22 October 2008.

*Alston & Bird LLP, by Jasper L. Cummings, Jr. for
plaintiff-appellant.*

*Attorney General Roy A. Cooper, III, by Special Deputy
Attorney General Kay Linn Miller Hobart, for
defendant-appellee.*

*Wilson & Coffey, LLP by G. Gray Wilson and Stuart H.
Russell for amicus curiae.*

STROUD, Judge.

Plaintiff Sam's East, Inc. appeals from an order entered 4
January 2008 granting summary judgment in favor of defendant. This
case was consolidated with *Wal-Mart Stores East, Inc. v. Hinton*,
No. COA08-450 (Wake County 06-CVS-3928) for the purpose of entry of
summary judgment because as the trial court stated in the summary
judgment order, "with the exception of the amounts assessed . . .
the same facts and reasoning apply" to both cases. Neither party
disputes this statement and we found nothing in the record

indicating otherwise. Accordingly, for the reasons stated in *Wal-Mart Stores East, Inc. v. Hinton*, No. COA08-450, which is to be filed simultaneously with this opinion, judgment is affirmed with respect to the assessment of additional taxes and interest thereon. Furthermore, judgment as to the penalties assessed is also affirmed.

Affirmed.

Judges STEELMAN and JACKSON concur.